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THE

DEBATES

IN THE SEVERAL

STATE CONVENTIONS,

ON THE ADOPTION OF THE

FEDERAL CONSTITUTION,

AS RECOMMENDED BY THE

GENERAL CONVENTION AT PHILADELPHIA,

IN

1787.

TOGETHER WITH THE

JOURNAL OF THE FEDERAL CONVENTION,

LUTHER MARTIN'S LETTER,

YATES'S MINUTES,

CONGRESSIONAL OPINIONS,

VIRGINIA AND KENTUCKY RESOLUTIONS OF '98-'99,

AND

OTHER ILLUSTRATIONS OF THE CONSTITUTION.

IN FIVE VOLUMES.

VOL. III.

SECOND EDITION, WITH CONSIDERABLE ADDITIONS.

COLLECTED AND REVISED FROM CONTEMPORARY PUBLICATIONS,

By JONATHAN ELLIOT.

PUBLISHED UNDER THE SANCTION OF CONGRESS.

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1866.

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Entered according to Act of Congress, in the year one thousand eight hundred and thirty-six,

By JONATHAN ELLIOT,

in the Clerk's Office of the District Court of the District of Columbia.

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THE

DEBATES

IN

THE CONVENTION

OF THE

COMMONWEALTH OF VIRGINIA,

ON THE

ADOPTION OF THE FEDERAL CONSTITUTION.

IN CONVENTION, RICHMOND, MONDAY, *June* 2, 1788.

THIS being the day recommended by the legislature for the meeting of the Convention, to take into consideration the proposed plan of federal government, a majority of the gentlemen delegated thereto assembled at the public buildings in Richmond; whereupon they proceeded to the choice of a secretary, when John Beckley was appointed to that office.

The Hon. EDMUND PENDLETON was nominated, and unanimously elected president; who, being seated in the chair, thanked the Convention for the honor conferred on him, and strongly recommended to the members to use the utmost moderation and temper in their deliberations on the great and important subject now before them.

On the recommendation of Mr. Paul Carrington, the Rev. Abner Waugh was unanimously elected chaplain, to attend, every morning, to read prayers, immediately after the bell shall be rung for calling the Convention.

The Convention then appointed William Drinkard, Sen., and William Drinkard, Jun., door-keepers.

On motion, —

Ordered, That a committee of privileges and elections be appointed and a committee was appointed, of —

Mr. Benjamin Harrison, Mr. George Mason, Gov. Randolph, Mr George Nicholas, Mr. John Marshal, Mr. Paul Carrington, Mr. Tyler, Mr. Alexander White, Mr. Blair, Mr. Bland, Mr. Grayson, Mr. Fisher, Mr. Matthews, Mr. John Jones, Mr. Wythe, Mr. William Cabell, Mr. James Taylor, [of Caroline,] Mr. Gabriel Jones, Mr. Corbin, Mr. Innis, Mr. Monroe, Mr. Henry Lee, Mr. Bullitt.

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Ordered, That the committee of privileges and elections do examine and report the returns for electing delegates to serve in this Convention; and that, in cases where no returns are made, it be an instruction to the said committee to receive such evidence as the sitting member shall produce of his election, and report the same to the Convention.

On motion,—

Ordered, That Mr. Edmund Pendleton, Jun. be appointed clerk to the committee of privileges and elections.

Mr. P. CARRINGTON presented a petition of Thomas Stith, of the county of Brunswick, complaining of the undue election and return of Binnas Jones, one of the delegates returned to serve in this Convention, for the said county of Brunswick; which was ordered to be referred to the committee of privileges and elections.

On motion of Mr. CORBIN,—

Ordered, That Mr. Augustine Davis be appointed printer to the Convention, and that he cause to be printed, forthwith, two hundred copies of the plan of federal government; also two hundred copies of the resolutions of the General Assembly, of the 25th of October last, to be distributed among the members of this Convention.

On motion of Mr. GEORGE MASON,—

Ordered, That the Convention be adjourned until to-morrow morning, eleven o'clock, then to meet at the New Academy, on Shockœ Hill, in this city.

TUESDAY, *June* 3, 1788.

The Convention met at the New Academy, on Shockœ Hill, pursuant to adjournment.

Mr. LEE presented a petition of Richard Morris, of the county of Louisa, complaining of an undue election and return of William White, as one of the delegates to serve in this Convention, for the said county of Louisa; which was ordered to be referred to the committee of privileges and elections.

On motion of Mr. HARRISON,—

Ordered, That Mr. William Pierce be appointed serjeant-at-arms to the Convention.

On motion of Mr. JOHN JONES,—

Ordered, That Daniel Hicks be appointed door-keeper to the Convention.

Mr. HARRISON moved that all the papers relative to the Constitution should be read.

Mr. TYLER observed, that, before any papers were read, certain rules and regulations should be established to govern the Convention in their deliberations; which, being necessary

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on all occasions, are more particularly so on this grea. and important one.

Gov. RANDOLPH said, that he was fully convinced of the necessity of establishing rules; but as this was on a subject which might involve the Convention in a debate which would take up considerable time, he recommended that the rules of the House of Delegates, as far as they were applicable, should be observed.

Mr. TYLER replied, that he had considered what the honorable gentleman had said, and the objection to the mode recommended by him.

Upon which the Convention came to the following resolution: —

Resolved, That the rules and orders for conducting business in the House of Delegates, so far as the same may be applicable to the Convention, be observed therein.

On motion, —

The resolution of Congress of the 28th of September last, together with the report of the federal Convention lately held in Philadelphia; the resolutions of the General Assembly of the 25th of October last, and the act of the General Assembly entitled, "An act concerning the Convention to be held in June next," were read; —

Whereupon Mr. MASON addressed the president as follows: Mr. President, I hope and trust, sir, that this Convention, appointed by the people, on this great and important occasion, for securing, as far as possible, to the latest generation, the happiness and liberty of the people, will freely and fully investigate this important subject. For this purpose I humbly conceive the fullest and clearest investigation indispensably necessary, and that we ought not to be bound by any general rules whatsoever. The curse denounced by the divine vengeance will be small, compared to what will justly fall upon us, if from any sinister views we obstruct the fullest inquiry. This subject, therefore, ought to obtain the freest discussion, clause by clause, before any general previous question be put; nor ought it to be precluded by any other question.

Mr. TYLER moved that the Convention should resolve itself into a committee of the whole Convention, to-morrow, to take into consideration the proposed plan of government, in order to have a fairer opportunity of examining its merits.

Mr. MASON, after recapitulating his former reasons for having urged a full discussion, clause by clause, concluded by agreeing, with Mr. Tyler, that a committee of the whole Convention was the most proper mode of proceeding.

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Mr. MADISON concurred with the honorable gentleman in going into a full and free investigation of the subject before them, and said he had no objection to the plan proposed.

Mr. MASON then moved the following resolution, which was agreed to by the Convention unanimously: —

Resolved, That no question, general or particular, shall be propounded in this Convention, upon the proposed Constitution of government for the United States, or upon any clause or article thereof, until the said Constitution shall have been discussed, clause by clause, through all its parts.

Mr. TYLER said, he should renew his motion for the Convention to resolve itself into a committee of the whole Convention, the next day, to take under consideration the proposed plan of government.

Mr. LEE strongly urged the necessity and propriety of immediately entering into the discussion.

Mr. MASON. Mr. President, no man in this Convention is more averse to take up the time of the Convention than I am; but I am equally against hurrying them precipitately into any measure. I humbly conceive, sir, that the members ought to have time to consider the subject. Precious as time is, we ought not to run into the discussion before we have the proper means.

Mr. HARRISON urged, as a reason for deferring the discussion till to-morrow, that many of the members had not yet arrived, and that it would be improper to enter into the business until they should arrive.

Mr. LEE answered the two objections against entering immediately into the business. He begged gentlemen to consider that they were limited in point of time; that, if they did not complete their business on the 22d day of the month, they should be compelled to adjourn, as the legislature was to meet the 23d. He also begged gentlemen to consider the consequences of such an adjournment; that the Constitution, he believed, was very fully understood by every gentleman present, having been the subject of public and private consideration of most persons on the continent, and of the peculiar meditation of those who were deputed to the Convention.

The Convention then came to the following resolution: —

Resolved, That this Convention will, to-morrow, resolve itself into a committee of the whole Convention, to take into consideration the proposed Constitution of government for the United States.

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

WEDNESDAY, *June* 4, 1788.

Mr. HARRISON reported, from the committee of privileges and elections, that the committee had, according to order, examined the returns for electing delegates to serve in this Convention, and had come to a resolution thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same was again twice read, and agreed to by the house, as followeth: —

Resolved, That it is the opinion of this committee, That the returns for electing delegates to serve in this Convention for the counties of Albemarle, Amelia, Amherst, Bedford, Botetourt, Brunswick, Buckingham, Caroline, Charlotte, Charles City, Chesterfield, Culpepper, Cumberland, Dinwiddie, Elizabeth City, Fauquier, Fairfax, Fayette, Fluvanna, Frederick, Gloucester, Goochland, Greenbrier, Greenesville, Halifax, Hampshire, Hardy, Harrison, Hanover, Henrico, Henry, James City, Jefferson, Isle of Wight, King George, King and Queen, King William, Lancaster, Lincoln, Loudon, Louisa, Lunenberg, Madison, Mecklenburgh, Mercer, Middlesex, Monongalia, Montgomery, Nansemond, New Kent, Nelson, Norfolk, Northampton, Northumberland, Ohio, Orange, Pittsylvania, Princess Anne, Prince George, Prince William, Prince Edward, Powhatan, Randolph, Richmond, Rockbridge, Rockingham, Russell, Shenandoah, Southampton, Spottsylvania, Stafford, Surry, Sussex, Warwick, Washington, York, and of a delegate for the borough of Norfolk and city of Williamsburg, are satisfactory.

Mr. HARRISON reported, from the committee of privileges and elections, —

That the committee had inquired into the elections of delegates for the counties of Accomack and Franklin, and had agreed to a report, and come to several resolutions thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same were again twice read, and agreed to by the house, as followeth: —

It appears to your committee, that no returns have been made of the election of delegates to serve in this Convention for the counties of Accomack and Franklin; that, as to the election of delegates for the said county of Accomack, it appears from the information of Nathaniel Darby and Littleton Eyre, Esquires, that they were at the election of delegates for the said county of Accomack, in March last, and that George Parker and Edmund Custis, Esquires, (the sitting members,) were proclaimed by the sheriff, at the close of the poll, as duly elected delegates to represent the said county in this Convention.

That, as to the election of delegates for the said county of Franklin, it appears to your committee, from the information of Robert Williams, Esquire, that he was at the election of delegates for the said county of Franklin, in March last, and that John Early and Thomas Arthurs, Esquires, (the sitting members,) were proclaimed by the sheriff, at the close of the poll, as duly elected delegates to represent the said county of Accomack in this Convention,

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Resolved, That it is the opinion of this committee, that John Early and Thomas Arthurs, Esquires, were elected delegates to represent the said county of Franklin in this Convention.

Resolved, That it is the opinion of this committee, that Edmund Custis and George Parker, Esquires, were elected delegates to represent the said county of Accomack in this Convention.

Ordered, That Mr. Madison and Mr. Lawson be added to the committee of privileges and elections.

Mr. ARCHIBALD STUART presented a petition of Samuel Anderson, of the county of Cumberland, setting forth, —

That Thomas H. Drew, Esquire, one of the delegates returned for the said county to serve in this Convention, was not, at the time of his election, a freeholder in this commonwealth; and praying that the election of the said Thomas H. Drew may be set aside, and another election directed to supply his place; which was read, and ordered to be referred to the committee of privileges and elections.

The Convention, according to the order of the day, resolved itself into a committee of the whole Convention, to take into consideration the proposed plan of government, Mr. WYTHE in the chair.

Mr. HENRY moved, —

That the act of Assembly appointing deputies to meet at Annapolis to consult with those from some other states, on the situation of the commerce of the United States — the act of Assembly appointing deputies to meet at Philadelphia, to revise the Articles of Confederation — and other public papers relative thereto — should be read.

Mr. PENDLETON then spoke to the following effect: Mr. Chairman, we are not to consider whether the federal Convention exceeded their powers. It strikes my mind that this ought not to influence our deliberations. This Constitution was transmitted to Congress by that Convention; by the Congress transmitted to our legislature; by them recommended to the people; the people have sent us hither to determine whether this government be a proper one or not. I did not expect these papers would have been brought forth. Although those gentlemen were only directed to consider the defects of the old system, and not devise a new one, if they found it so thoroughly defective as not to admit a revising, and submitted a new system to our consideration, which the people have deputed us to investigate, I cannot find any degree of propriety in reading those papers.

Mr. HENRY then withdrew his motion.

The clerk proceeded to read the preamble, and the two first sections of the first article.

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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.

House of Representatives.

ART. 1. SECT. 1. — All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

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

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

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Mr. NICHOLAS. Mr. Chairman, the time being now come when this state is to decide on this important question, of rejecting or receiving this plan of government, it gave me great pleasure, yesterday, when the Convention determined to proceed with the fullest deliberation on the subject; as every gentleman will, in the course of the discussion, have an opportunity to urge every objection that may arise in his mind against this system. I beg gentlemen to offer all their objections here, and that none may be insisted on elsewhere; and I hope nothing urged without these walls will influence the mind of any one. If this part of the plan now under consideration be materially defective, I will readily

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agree it ought to be wholly rejected, because representation is the corner-stone on which the whole depends; but if, on investigation, it should be found to be otherwise, the highest gratitude should be shown to those gentlemen who framed it: although some small defects may appear in it, yet its merits, I hope, will amply cover those defects.

I shall take it into consideration, 1st, as it affects the qualifications of the electors; 2dly, as it affects the qualifications of the elected; 3dly, as to their number; 4thly, the time of their continuance in office; 5thly, their powers; and 6thly, whether this power be sufficient to enable them to discharge their duty without diminishing the security of the people—or, in other words, their responsibility.

I will consider it first, then, as to the qualifications of the electors. The best writers on government agree that, in a republic, those laws which fix the right of suffrage are funda mental. If, therefore, by the proposed plan, it is left uncertain in whom the right of suffrage is to rest, or if it has placed that right in improper hands, I shall admit that it is a radical defect; but in this plan there is a fixed rule for determining the qualifications of electors, and that rule the most judicious that could possibly have been devised, because it refers to a criterion which cannot be changed. A qualification that gives a right to elect representatives for the state legislatures, gives also, by this Constitution, a right to choose representatives for the general government. As the qualifications of electors are different in the different states, no particular qualifications, uniform through the states, would have been politic, as it would have caused a great inequality in the electors, resulting from the situation and circumstances of the respective states. Uniformity of qualifications would greatly affect the yeomanry in the states, as it would either exclude from this inherent right some who are entitled to it by the laws of some states at present, or be extended so universally as to defeat the admirable end of the institution of representation.

Secondly, as it respects the qualifications of the elected. It has ever been considered a great security to liberty, that very few should be excluded from the right of being chosen to the legislature. This Constitution has amply attended to this idea. We find no qualifications required except those of age and residence, which create a certainty of their judgment being matured, and of being attached to their state. It has been objected, that they ought to be possessed of landed

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estates; but, sir, when we reflect that most of the electors are landed men, we must suppose they will fix on those who are in a similar situation with themselves. We find there is a decided majority attached to the landed interest; consequently, the landed interest must prevail in the choice. Should the state be divided into districts, in no one can the mercantile interest by any means have an equal weight in the elections; therefore, the former will be more fully represented in the Congress; and men of eminent abilities are not excluded for the want of landed property. There is another objection which has been echoed from one end of the continent to the other — that Congress may alter the time, place, and manner of holding elections; that they may direct the place of elections to be where it will be impossible for those who have a right to vote, to attend; for instance, that they may order the freeholders of Albemarle to vote in the county of Princess Anne, or *vice versa*; or regulate elections, otherwise, in such a manner as totally to defeat their purpose, and lay them entirely under the influence of Congress. I flatter myself, that, from an attentive consideration of this power, it will clearly appear that it was essentially necessary to give it to Congress, as, without it, there could have been no security for the general government against the state legislatures. What, Mr. Chairman, is the danger apprehended in this case? If I understand it right, it must be, that Congress might cause the elections to be held in the most inconvenient places, and at so inconvenient a time, and in such a manner, as to give them the most undue influence over the choice, nay, even to prevent the elections from being held at all, — in order to perpetuate themselves. But what would be the consequence of this measure? It would be this, sir, — that Congress would cease to exist; it would destroy the Congress itself; it would absolutely be an act of suicide; and therefore it can never be expected. This alteration, so much apprehended, must be made by law; that is, with the concurrence of both branches of the legislature. Will the House of Representatives, the members of which are chosen only for two years, and who depend on the people for their reëlection, agree to such an alteration? It is unreasonable to suppose it.

But let us admit, for a moment, that they will: what would be the consequence of passing such a law? It would be, sir, that, after the expiration of the two years, at the next

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election they would either choose such men as would alter the law, or they would resist the government. An enlightened people will never suffer what was established for their security to be perverted to an act of tyranny. It may be said, perhaps, that resistance would then become vain; Congress are vested with the power of raising an army; to which I say, that if ever Congress shall have an army sufficient for their purpose, and disposed to execute their unlawful commands, before they would act under this disguise, they would pull off the mask, and declare themselves absolute. I ask, Mr. Chairman, is it a novelty in our government? Has not our state legislature the power of fixing the time, places, and manner of holding elections? The possible abuse here complained of never can happen as long as the people of the United States are virtuous. As long as they continue to have sentiments of freedom and independence, should the Congress be wicked enough to harbor so absurd an idea as this objection supposes, the people will defeat their attempt by choosing other representatives, who will alter the law. If the state legislature, by accident, design, or any other cause, would not appoint a place for holding elections, then there might be no election till the time was past for which they were to have been chosen; and as this would eventually put an end to the Union, it ought to be guarded against; and it could only be guarded against by giving this discretionary power, to the Congress, of altering the time, place, and manner of holding the elections. It is absurd to think that Congress will exert this power, or change the time, place, and manner established by the states, if the states will regulate them properly, or so as not to defeat the purposes of the Union. It is urged that the state legislature ought to be fully and exclusively possessed of this power. Were this the case, it might certainly defeat the government. As the powers vested by this plan in Congress are taken from the state legislatures, they would be prompted to throw every obstacle in the way of the general government. It was then necessary that Congress should have this power.

Another strong argument for the necessity of this power is, that, if it was left solely to the states, there might have been as many times of choosing as there are states. States having solely the power of altering or establishing the time of election, it might happen that there should be no Congress. Not

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only by omitting to fix a time, but also by the elections in the states being at thirteen different times, such intervals might elapse between the first and last election, as to prevent there being a sufficient number to form a house; and this might happen at a time when the most urgent business rendered their session necessary; and by this power, this great part of the representation will be always kept full, which will be a security for a due attention to the interest of the community; and also the power of Congress to make the times of elections uniform in all the states, will destroy the continuance of any cabal, as the whole body of representatives will go out of office at once.

I come now, sir, to consider that part of the Constitution which fixes the number of representatives. It is first necessary for us to establish what the number of representatives is to be. At present it only consists of sixty-five; but let us consider that it is only to continue at that number till the actual enumeration shall be made, which is to be within three years after the first meeting of Congress; and that the number of representatives will be ascertained, and the proportion of taxes fixed, within every subsequent term of ten years. Till this enumeration be made, Congress will have no power to lay direct taxes: as there is no provision for this purpose, Congress cannot impose it; as direct taxation and representation are to be regulated by the enumeration there directed, therefore they have no power of laying direct taxes till the enumeration be actually made. I conceive no apportionment can be made before this enumeration, there being no certain data to go on. When the enumeration shall be made, what will be the consequence? I conceive there will be always one for every thirty thousand. Many reasons concur to lead me to this conclusion. By the Constitution, the allotment now made will only continue till the enumeration be made; and as a new enumeration will take place every ten years, I take it for granted that the number of representatives will be increased, according to the progressive increase of population, at every respective enumeration; and one for every thirty thousand will amount to one hundred representatives, if we compute the number of inhabitants to be only three millions in the United States, which is a very moderate calculation. The first intention was only to have one for every forty thousand, which was afterwards estimated to be too few, and, according to this proportion, the present tem-

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porary number is fixed; but as it now stands, we readily see that the proportion of representatives is sufficiently numerous to answer every purpose of federal legislation, and even soon to gratify those who wish for the greatest number. I take it that the number of representatives will be proportioned to the highest number we are entitled to; and that it never will be less than one for every thirty thousand. I formed this conclusion from the situation of those who will be our representatives. They are all chosen for two years; at the end of which term they are to depend on the people for their reëlection. This dependence will lead them to a due and faithful discharge of their duty to their constituents: the augmentation of their number will conciliate the affections of the people at large; for the more the representatives increase in number, the greater the influence of the people in the government, and the greater the chance of reëlection to the representatives.

But it has been said, that the Senate will not agree to any augmentation of the number of representatives. The Constitution will entitle the House of Representatives to demand it. Would the Senate venture to stand out against them? I think they would not, sir. Were they ready to recede from the evident sense of the Constitution, and grasp at power not thereby given them, they would be compelled to desist. But, that I may not be charged with urging suppositions, let us see what ground this stands upon, and whether there be any real danger to be apprehended. The first objection that I shall consider is, that, by paucity of numbers, they will be more liable to depart from their duty, and more subject to influence. I apprehend that the fewer the number of representatives, the freer the choice, and the greater the number of electors, the less liable to the unworthy acts of the candidates will they be; and thus their suffrage, being free, will probably fall on men of the most merit. The practice of that country, which is situated more like America than any other country in the world, will justify this supposition. The British House of Commons consists, I believe, of five hundred and fifty-eight members; yet the greater number of these are supposed to be under the undue influence of the crown. A single fact from the British history illustrates these observations, — viz., that there is scarcely an instance, for a century past, of the crown's exercising its undoubted prerogative of rejecting a bill sent up to it by the

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two houses of Parliament: it is no answer to say, that the king's influence is sufficient to prevent any obnoxious bills passing the two houses; there are many instances, in that period, not only of bills passing the two houses, but even receiving the royal assent, contrary to the private wish and inclination of the prince.

It is objected, however, as a defect in the Constitution, that it does not prohibit the House of Representatives from giving their powers, particularly that respecting the support &c., of armies, out of their hands for a longer term than two years. Here, I think, the enemies to the plan reason unfairly; they first suppose that Congress, from a love of power natural to all, will, in general, abuse that with which they are invested; and then they would make us apprehend that the House of Representatives, notwithstanding their love of power, (and it must be supposed as great in a branch of Congress as in the whole,) will give out of their hands the only check which can insure to them the continuance of the participation of the powers lodged in Congress in general. In England, there is no restraint of this kind on the Parliament; and yet there is no instance of a money bill being passed for a longer term than one year; the proposed plan, therefore, when it declares that no appropriation for the support of an army shall be made for a longer term than two years, introduces a check unknown to the English constitution, and one which will be found very powerful when we reflect that, if the House of Representatives could be prevailed on to make an appropriation for an army for two years, at the end of that time there will be a new choice of representatives. Thus I insist that security does not depend on the number of representatives: the experience of that country also shows that many of their counties and cities contain a greater number of souls than will be entitled to a representation in America; and yet the representatives chosen in those places have been the most strenuous advocates of liberty, and have exerted themselves in the defence of it, even in opposition to those chosen by much smaller numbers. Many of the senatorial districts in Virginia also contain a greater number of souls; and yet I suppose no gentleman within these walls will pay the senators chosen by them so poor a compliment as to attribute less wisdom and virtue to them than to the delegates chosen from single

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counties; and as there is greater probability that the electors in a large district will be more independent, so I think the representatives chosen in such districts will be more so too; for those who have sold themselves to their representatives will have no right to complain, if they, in their turn, barter away their rights and liberties; but those who have not themselves been bought, will never consent to be sold. Another objection made to the small number of representatives, is, that, admitting they were sufficient to secure their integrity, yet they cannot be acquainted with the local situation and circumstances of their constituents. When we attend to the object of their jurisdiction, we find this objection insupportable. Congress will superintend the great national interests of the Union. Local concerns are left to the state legislatures. When the members compare and communicate to one another their knowledge of their respective districts and states, their collective intelligence will sufficiently enable them to perform the objects of their cognizance. They cannot extend their influence or agency to any objects but those of a general nature; the representatives will, therefore, be sufficiently acquainted with the interests of their states, although chosen by large districts. As long as the people remain virtuous and uncorrupted, so long, we may fairly conclude, will their representatives, even at their present number, guard their interests, and discharge their duty with fidelity and zeal: when they become otherwise, no government can possibly secure their freedom.

I now consider the time of their continuance in office. A short continuance in office, and a return of the officers to the mass of the people, there to depend solely on their former good conduct for their reëlection, is of the highest security to public liberty. Let the power of the persons elected be what it may, they are only the trustees, and not the masters, of the people; yet the time ought not to be so short that they could not discharge their duty with ability. Considering this, a term of two years is short enough in this case. Many will have a considerable distance to travel from the places of their abode to the seat of the general government. They must take time to consider the situation of the Union, make themselves acquainted with the circumstances of our finances, and the relative situation of, and our connections with, foreign nations, and a variety of other objects of im

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portance. Would it not be the height of impolicy that they should go out of their office just as they began to know something of the nature of their duty? Were this the case, the interest of their constituents could never be sufficiently attended to. Our representatives for the state legislature are chosen for one year, and it has never been thought too long a term. If one year be not too long to elect a state representative, give me leave to say, that two years ought not to be considered as too long for the election of the members of the general legislature. The objects of the former are narrow, and limited to state and local affairs; the objects of the latter are coëxtensive with the continent. In England, at the time they were most jealous of the prerogative of the king, triennial elections were their most ardent wish; they would have thought themselves perfectly happy in this acquisition; nor did they think of a shorter term of elections. Let gentlemen recollect that it is to septennial elections we owe our liberties. The elections were for seven years in most of the states before the late revolution.

I now consider their weight and power, and whether these will be sufficient to give them, as the representatives of the people, their due weight in the government. By the Constitution, they are one entire branch of the legislature, without whose consent no law can be passed; — all money bills are to originate in their house; — they are to have the sole power of impeachment; — their consent is necessary to all acts or resolutions for the appropriation of the public money; to all acts for laying and collecting duties, imposts, and excises; for borrowing money on the credit of the United States; for creating all officers, and fixing their salaries; for coining money; for raising and supporting armies; for raising and maintaining a navy; and for establishing rules for the government of the land and naval forces: these are the powers which will be fixed in the House of Representatives.

Hence, it appears, our representatives have more comparative power in the scale of government than the commons of England; and yet, in that country, the commons, possessing less powers, opposed with success much greater powers than our representatives have to encounter. In that country, the king is one entire branch of the legislature, and an hereditary monarch; can prorogue or dissolve, call or dismiss, the two houses at his pleasure. Besides his judicial influ

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ence, he is head of the church, fountain of honor, generalissimo of the forces by sea or land, may raise what fleets and armies he pleases, is rendered personally sacred by the constitutional maxim that he can do no wrong; and, besides several other great powers, has a grand revenue settled on him, sufficient to answer the ordinary ends of government; it being established as a custom, at the accession of every new king, to settle such a revenue on him for life; and can increase the House of Lords at any time, and thereby extend his legislative influence. Notwithstanding the enormity of these powers, it has been found that the House of Commons, with powers greatly inferior to those of our representatives, is a match for both the king and the nobles. This superiority resulted from their having the power of withholding or granting supplies. What will put this in a still clearer point of view, is, that the House of Commons were not originally possessed of these powers. The history of the English Parliament will show that the great degree of power which they now possess was acquired from beginnings so small, that nothing but the innate weight of the power of the people, when lodged with their representatives, could have effected it. In the reign of Edward I., in the year 1295, the House of Commons were first called by legal authority; they were then confined to giving their assent barely to supplies to the crown. In the reign of Edward II., they first annexed petitions to the bills by which they granted subsidies. Under Edward III., they declared they would not in future acknowledge any law to which they had not consented: in the same reign, they impeached and brought to punishment some of the ministers of the crown. Under Henry IV., they refused supplies until an answer had been given to their petitions; and have increased their powers, in succeeding reigns, to such a degree, that they entirely control the operation of government, even in those cases where the king's prerogative gave him, nominally, the sole direction.

Let us here consider the causes to which this uncommon weight and influence may be assigned. The government being divided into branches, executive and legislative, in all contests between them the people have divided into the favorers of one or the other. From their dread of the executive, and affection to their representatives, they have always sided with the legislature. This has rendered the

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legislature successful. The House of Commons have succeeded also by withholding supplies; they can, by this power, put a stop to the operations of government, which they have been able to direct as they pleased. This power has enabled them to triumph over all obstacles; it is so important that it will in the end swallow up all others. Any branch of government that depends on the will of another for supplies of money, must be in a state of subordinate dependence, let it have what other powers it may. Our representatives, in this case, will be perfectly independent, being vested with this power fully. Another source of superiority is the power of impeachment. In England, very few ministers have dared to bring on themselves an accusation by the representatives of the people, by pursuing means contrary to their rights and liberties. Few ministers will ever run the risk of being impeached, when they know the king cannot protect them by a pardon. This power must have much greater force in America, where the President himself is personally amenable for his mal-administration; the power of impeachment must be a sufficient check on the President's power of pardoning before conviction. I think we may fairly conclude, that, if the House of Commons, in England, have been able to oppose, with success, a powerful hereditary nobility, and an hereditary monarch, with all the appendages of royalty, and immense powers and revenues, our federal House of Representatives will be able to oppose, with success, all attempts by a President, only chosen for four years, by the people, with a small revenue, and limited powers, sufficient only for his own support; and a Senate chosen only for six years, (one third of whom vacate their seats every two years,) accountable to the state legislatures, and having no separate interest from them or the people.

I now come to consider their responsibility to the people at large. The probability of their consulting most scrupulously the interests of their constituents must be self-evident; this probability will result from their biennial elections, whether they wish to be reëlected or not. If they wish to be reëlected, they will know that on their good conduct alone their reëlection will depend: if they wish not to be reelected, they will not enter into a fixed combination against the people, because they return to the mass of the people, where they will participate in the disadvantages of bad laws.

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By the publication of the yeas and nays, the votes of the individual members will be known; they will act, therefore, as if under the eyes of their constituents. The state legislatures, also, will be a powerful check on them: every new power given to Congress is taken from the state legislatures; they will be, therefore, very watchful over them; for, should they exercise any power not vested in them, it will be a usurpation of the rights of the different state legislatures, who would sound the alarm to the people. Upon such an appeal from the states to the people, nothing but the propriety of their conduct would insure the Congress any chance of success. Should a struggle actually ensue, it would terminate to the disadvantage of the general government, as Congress would be the object of the fears, and the state legislatures the object of the affections, of the people. One hundred and sixty members, chosen in this state legislature, must, on any dispute between Congress and the state legislature, have more influence than ten members of Congress. One representative to Congress will be chosen by eight or ten counties; his influence and chance of reëlection will be very small when opposed by twenty men of the best interests in the district: when we add to this the influence of the whole body of the state officers, I think I may venture to affirm that every measure of Congress would be successfully opposed by the states. The experience of this state legislature hath fully satisfied me that this reasoning is just. The members of our Senate have never ventured to oppose any measure of the House of Delegates; and if they had, their chance of being reëlected, when opposed by the delegates of the different counties, would be small. But what demonstrates that there is sufficient responsibility in the representatives to the people, and what must satisfy the committee, is this — that it will be their own interest to attend to that of the people at large. They can pass no law but what will equally affect their own persons, their families, and property. This will be an additional influence to prevail with them to attend to their duty, and more effectually watch and check the executive. Their consequence as members will be another inducement. If they will individually signalize themselves in support of their constituents, and in curbing the usurpations of the executive, it will best recommend them to the people, secure their reëlection, and enhance their conse-

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quence. They therefore will become watchful guardians of the interests of the people.

The Constitution has wisely interposed another check, to wit: — that no person holding an office of trust or profit under the United States shall be a member of either house during his continuance in office. No powers ought to be vested in the hands of any who are not representatives of the people, and amenable to them. A review of the history of those countries with which I am acquainted, will show, that, for want of representation and responsibility, power has been exercised with an intention to advance the interest of a few, and not to remove the grievances of the many. At the time the Romans expelled their kings, the executive authority was given to consuls, and the people did not gain by the change; for the plebeian interest declined, while that of the patricians rapidly advanced, till the oppressions of the latter caused the former to retire to the Sacred Mount; and even this struggle terminated only in the creation of the tribunes of the people. Another struggle produced only the advantage of their admission to the consular dignity, and permission to intermarry into patrician families; so that every success on the side of the people only produced a change in their tyrants. Under Louis XI., in France, a war took place between the king and his barons, professedly for the public good only; and, they being successful, a treaty was made for the securing that public good; but it contained stipulations only in favor of a few lords, — not a word in favor of the people. But in England, where the people had delegated all their power to a few representatives, all contests have terminated in favor of the people. One contest produced Magna Charta, containing stipulations for the good of the whole. This Great Charter was renewed, enlarged, and confirmed, by several succeeding kings: the *Habeas Corpus* under Charles II., and Declaration of Rights under William and Mary, — the latter limiting the prerogative of the crown, the former establishing the personal liberty of the subject, — were also in favor of the whole body of the people. Every revolution terminated differently in Rome and in England; in the first they only caused a change in their masters, in the second they ended in a confirmation of their liberties. The powerful influence of the people in gaining an extension of their liberties will appear more forcibly, and our confidence in our House of

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Representatives must be increased, when we come to consider the manner in which the House of Commons in England are elected. They consist of five hundred and fifty-eight members, two hundred of whom are chosen by about seven thousand freeholders in the counties, out of eight millions of people: the rest are chosen by towns, several of which, though small, elect five members; and even there are instances of two representatives being chosen by one elector. The most baneful elections procure seats; one half of the candidates purchase them: yet the people in England have ever prevailed when they persisted in any particular purpose. If, then, they have prevailed there when opposed by two other powerful branches of the legislature, and when elected so unduly, what may we not expect from our House of Representatives, fairly chosen by the people? If the people there prevail with septennial elections, what may we not expect from our representatives, chosen only for two years, and who only have to encounter the feeble power of the President, and a Senate whose interest will lead them to do their duty? The opposers of this plan of government dread the exercise of the most necessary, the most indispensable powers, and exercised by their own representatives. Magna Charta, and Declaration of Rights, only say that such powers shall not be exercised but with consent of Parliament; and experience has proved that the making their consent necessary has sufficiently secured a proper exercise of those powers. The best writers also agree that such powers may always be lodged with representatives. We have all the security which a people sensible and jealous of their liberties can wish for. Experience has evinced that mankind can trust those who have similar rights with themselves. Power lodged in the hands of representatives, chosen as ours must be, cannot be abused. The truth of this cannot but strike every gentleman in the committee: and still the people can, when they please, change the government, being possessed of the supreme power. Mr. Nicholas then quoted a passage from the celebrated Dr. Price,* who was so strenuous a friend to America, proving that, as long as representation and responsibility existed in any country, liberty could not be endangered; and concluded by saying he conceived the Constitution founded on the strictest principles of true policy

* Observations on Civil Liberty.

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and liberty, and that he was willing to trust his own happiness, and that of his posterity, to the operation of that system.

Mr. HENRY. Mr. Chairman, the public mind, as well as my own, is extremely uneasy at the proposed change of government. Give me leave to form one of the number of those who wish to be thoroughly acquainted with the reasons of this perilous and uneasy situation, and why we are brought hither to decide on this great national question. I consider myself as the servant of the people of this commonwealth, as a sentinel over their rights, liberty, and happiness. I represent their feelings when I say that they are exceedingly uneasy at being brought from that state of full security, which they enjoyed, to the present delusive appearance of things. A year ago, the minds of our citizens were at perfect repose. Before the meeting of the late federal Convention at Philadelphia, a general peace and a universal tranquillity prevailed in this country; but, since that period, they are exceedingly uneasy and disquieted. When I wished for an appointment to this Convention, my mind was extremely agitated for the situation of public affairs. I conceived the republic to be in extreme danger. If our situation be thus uneasy, whence has arisen this fearful jeopardy? It arises from this fatal system; it arises from a proposal to change our government — a proposal that goes to the utter annihilation of the most solemn engagements of the states — a proposal of establishing nine states into a confederacy, to the eventual exclusion of four states. It goes to the annihilation of those solemn treaties we have formed with foreign nations.

The present circumstances of France — the good offices rendered us by that kingdom — require our most faithful and most punctual adherence to our treaty with her. We are in alliance with the Spaniards, the Dutch, the Prussians; those treaties bound us as thirteen states confederated together. Yet here is a proposal to sever that confederacy. Is it possible that we shall abandon all our treaties and national engagements? — and for what? I expected to hear the reasons for an event so unexpected to my mind and many others. Was our civil polity, or public justice, endangered or sapped? Was the real existence of the country threatened, or was this preceded by a mournful progression of events? This proposal of altering our federal government is of a most alarming

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nature! Make the best of this new government — say it is composed by any thing but inspiration — you ought to be extremely cautious, watchful, jealous of your liberty; for, instead of securing your rights, you may lose them forever. If a wrong step be now made, the republic may be lost forever. If this new government will not come up to the expectation of the people, and they shall be disappointed, their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg gentlemen to consider, that a wrong step, made now, will plunge us into misery, and our republic will be lost. It will be necessary for this Convention to have a faithful historical detail of the facts that preceded the session of the federal Convention, and the reasons that actuated its members in proposing an entire alteration of government, and to demonstrate the dangers that awaited us. If they were of such awful magnitude as to warrant a proposal so extremely perilous as this, I must assert, that this Convention has an absolute right to a thorough discovery of every circumstance relative to this great event. And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, *We, the people?* My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, *We, the people*, instead of, *We, the states?* States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states. I have the highest respect for those gentlemen who formed the Convention, and, were some of them not here, I would express some testimonial of esteem for them. America had, on a former occasion, put the utmost confidence in them — a confidence which was well placed; and I am sure, sir, I would give up any thing to them; I would cheerfully confide in them as my representatives. But, sir, on this great occasion, I would demand the cause of their conduct. Even from that illustrious man who saved us

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by his valor, I would have a reason for his conduct: that liberty which he has given us by his valor, tells me to ask this reason; and sure I am, were he here, he would give us that reason. But there are other gentlemen here, who can give us this information. The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me: I wish to hear the real, actual, existing danger, which should lead us to take those steps, so dangerous in my conception. Disorders have arisen in other parts of America; but here, sir, no dangers, no insurrection or tumult have happened; every thing has been calm and tranquil. But, notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference of opinion has gone to a degree of inflammatory resentment in different parts of the country, which has been occasioned by this perilous innovation. The federal Convention ought to have amended the old system; for this purpose they were solely delegated; the object of their mission extended to no other consideration. You must, therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present Confederation, and what are the causes of this proposal to change our government.

Gov. RANDOLPH. Mr. Chairman, had the most enlightened statesman whom America has yet seen, foretold, but a year ago, the crisis which has now called us together, he would have been confronted by the universal testimony of history; for never was it yet known, that, in so short a space, by the peaceable working of events, without a war, or even the menace of the smallest force, a nation has been brought to agitate a question, an error in the issue of which may blast their happiness. It is, therefore, to be feared, lest to this trying exigency the best wisdom should be unequal; and here (if it were allowable to lament any ordinance of nature) might it be deplored that, in proportion to the magnitude of a subject, is the mind intemperate. Religion, the dearest of all interests, has too often sought proselytes by fire rather than by reason; and politics, the next in rank, is too often nourished by passion, at the expense of the understanding. Pardon me, however, for expecting one exception to the tendency of mankind from the dignity of this Con-

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vention — a mutual toleration, and a persuasion that no man has a right to impose his opinions on others. Pardon me, too, sir, if I am particularly sanguine in my expectations from the chair: it well knows what is order, how to command obedience, and that political opinions may be as honest on one side as on the other. Before I press into the body of the argument, I must take the liberty of mentioning the part I have already borne in this great question; but let me not here be misunderstood. I come not to apologize to any individual within these walls, to the Convention as a body, or even to my fellow-citizens at large. Having obeyed the impulse of duty, having satisfied my conscience, and, I trust, my God, I shall appeal to no other tribunal: nor do I come a candidate for popularity; my manner of life has never yet betrayed such a desire. The highest honors and emoluments of this commonwealth are a poor compensation for the surrender of personal independence. The history of England from the revolution, and that of Virginia for more than twenty years past, show the vanity of a hope that general favor should ever follow the man who, without partiality or prejudice, praises or disapproves the opinions of friends or of foes: nay, I might enlarge the field, and declare, from the great volume of human nature itself, that to be moderate in politics forbids an ascent to the summit of political fame. But I come hither, regardless of allurements, to continue as I have begun; to repeat my earnest endeavors for a firm, energetic government; to enforce my objections to the Constitution, and to concur in any practical scheme of amendments; but I never will assent to any scheme that will operate a dissolution of the Union, or any measure which may lead to it.

This conduct may possibly be upbraided as injurious to my own views; if it be so, it is, at least, the natural offspring of my judgment. I refused to sign, and if the same were to return, again would I refuse. Wholly to adopt, or wholly to reject, as proposed by the Convention, seemed too hard an alternative to the citizens of America, whose servants we were, and whose pretensions amply to discuss the means of their happiness were undeniable. Even if adopted under the terror of impending anarchy, the government must have been without the safest bulwark — the hearts of the people; and, if rejected because the chance for amendments was cut off, the Union would have been irredeemably lost. This

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seems to have been verified by the event in Massachusetts; but our Assembly have removed these inconveniences, by propounding the Constitution to our full and free inquiry. When I withheld my subscription, I had not even the glimpse of the genius of America, relative to the principles of the new Constitution. Who, arguing from the preceding history of Virginia, could have divined that she was prepared for the important change? In former times, indeed, she transcended every colony in professions and practices of loyalty; but she opened a perilous war, under a democracy almost as pure as representation would admit; she supported it under a constitution which subjects all rule, authority, and power, to the legislature; every attempt to alter it had been baffled: the increase of Congressional power had always excited an alarm. I therefore would not bind myself to uphold the new Constitution, before I had tried it by the true touchstone; especially, too, when I foresaw that even the members of the general Convention might be instructed by the comments of those who were without doors. But I had, moreover, objections to the Constitution, the most material of which, too lengthy in detail, I have as yet barely stated to the public, but shall explain when we arrive at the proper points. Amendments were consequently my wish; these were the grounds of my repugnance to subscribe, and were perfectly reconcilable with my unalterable resolution to be regulated by the spirit of America, if, after our best efforts for amendments, they could not be removed. I freely indulge those who may think this declaration too candid, in believing that I hereby depart from the concealment belonging to the character of a statesman. Their censure would be more reasonable, were it not for an unquestionable fact, that the spirit of America depends upon a combination of circumstances which no individual can control, and arises not from the prospect of advantages which may be gained by the arts of negotiation, but from deeper and more honest causes.

As with me the only question has ever been between previous and subsequent amendments, so will I express my apprehensions, that the postponement of this Convention to so late a day has extinguished the probability of the former without inevitable ruin to the Union, and the Union is the anchor of our political salvation; and I will assent to the

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lopping of this limb, (meaning his arm,) before I assent to the dissolution of the Union. I shall now follow the honorable gentleman (Mr. Henry) in his inquiry. Before the meeting of the federal Convention, says the honorable gentleman, we rested in peace; a miracle it was, that we were so: miraculous must it appear to those who consider the distresses of the war, and the no less afflicting calamities which we suffered in the succeeding peace. Be so good as to recollect how we fared under the Confederation. I am ready to pour forth sentiments of the fullest gratitude to those gentlemen who framed that system. I believe they had the most enlightened heads in this western hemisphere. Notwithstanding their intelligence, and earnest solicitude for the good of their country, this system proved totally inadequate to the purpose for which it was devised. But, sir, this was no disgrace to them. The subject of confederations was then new, and the necessity of speedily forming some government for the states, to defend them against the pressing dangers, prevented, perhaps, those able statesmen from making that system as perfect as more leisure and deliberation might have enabled them to do. I cannot otherwise conceive how they could have formed a system that provided no means of enforcing the powers which were nominally given it. Was it not a political farce to pretend to vest powers, without accompanying them with the means of putting them in execution? This want of energy was not a greater solecism than the blending together, and vesting in one body, all the branches of government. The utter inefficacy of this system was discovered, the moment the danger was over, by the introduction of peace; the accumulated public misfortunes that resulted from its inefficacy rendered an alteration necessary: this necessity was obvious to all America: attempts have accordingly been made for this purpose.

I have been a witness to this business from its earliest beginning. I was honored with a seat in the small Convention held at Annapolis. The members of that Convention thought, unanimously, that the control of commerce should be given to Congress, and recommended to their states to extend the improvement to the whole system. The members of the general Convention were particularly deputed to meliorate the Confederation. On a thorough contemplation

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of the subject, they found it impossible to amend that system. What was to be done? The dangers of America, which will be shown at another time by particular enumeration, suggested the expedient of forming a new plan. The Confederation has done a great deal for us, we all allow; but it was the danger of a powerful enemy, and the spirit of America, sir, and not any energy in that system, that carried us through that perilous war: for what were its best arms? The greatest exertions were made when the danger was most imminent. This system was not signed till March, 1781; Maryland having not acceded to it before, yet the military achievements and other exertions of America, previous to that period, were as brilliant, effectual, and successful, as they could have been under the most energetic government. This clearly shows that our perilous situation was the cement of our union. How different the scene when this peril vanished, and peace was restored! The demands of Congress were treated with neglect. One state complained that another had not paid its quotas as well as itself; public credit gone — for I believe, were it not for the private credit of individuals, we should have been ruined long before that time; commerce languishing; produce falling in value, and justice trampled under foot. We became contemptible in the eyes of foreign nations; they discarded us as little wanton bees, who had played for liberty, but had no sufficient solidity or wisdom to secure it on a permanent basis, and were therefore unworthy of their regard. It was found that Congress could not even enforce the observance of treaties. That treaty under which we enjoy our present tranquillity was disregarded. Making no difference between the justice of paying debts due to people here, and that of paying those due to people on the other side of the Atlantic, I wished to see the treaty complied with, by the payment of the British debts, but have not been able to know why it has been neglected. What was the reply to the demands and requisitions of Congress? — You are too contemptible; we will despise and disregard you.

I shall endeavor to satisfy the gentleman's political curiosity. Did not our compliance with any demand of Congress depend on our own free will? If we refused, I know of no coercive force to compel a compliance. After meeting in Convention, the deputies from the states communicated

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their information to one another. On a review of our critical situation, and of the impossibility of introducing any degree of improvement into the old system, what ought they to have done? Would it not have been treason to return without proposing some scheme to relieve their distressed country? The honorable gentleman asks why we should adopt a system that shall annihilate and destroy our treaties with France and other nations. I think the misfortune is, that these treaties are violated already, under the honorable gentleman's favorite system. I conceive that our engagements with foreign nations are not at all affected by this system; for the 6th article expressly provides that "all debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation." Does this system, then, cancel debts due to or from the continent? Is it not a well-known maxim that no change of situation can alter an obligation once rightly entered into? He also objects because nine states are sufficient to put the government in motion. What number of states ought we to have said? Ought we to have required the concurrence of all the thirteen? Rhode Island—in rebellion against integrity—Rhode Island plundered all the world by her paper money; and, notorious for her uniform opposition to every federal duty, would then have it in her power to defeat the Union; and may we not judge with absolute certainty, from her past conduct, that she would do so? Therefore, to have required the ratification of all the thirteen states would have been tantamount to returning without having done any thing. What other number would have been proper? Twelve? The same spirit that has actuated me in the whole progress of the business, would have prevented me from leaving it in the power of any one state to dissolve the Union; for would it not be lamentable that nothing could be done, for the defection of one state? A majority of the whole would have been too few. Nine states therefore seem to be a most proper number.

The gentleman then proceeds, and inquires why we assumed the language of "We, the people." I ask, Why not? The government is for the people; and the misfortune was, that the people had no agency in the government before. The Congress had power to make peace and war under

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the old Confederation. Granting passports, by the law of nations, is annexed to this power; yet Congress was reduced to the humiliating condition of being obliged to send deputies to Virginia to solicit a passport. (Notwithstanding the exclusive power of war given to Congress, the second article of the Confederation was interpreted to forbid that body to grant a passport for tobacco, which, during the war, and in pursuance of engagements made at Little York, was to have been sent into New York.) What harm is there in consulting the people on the construction of a government by which they are to be bound? Is it unfair? Is it unjust? If the government is to be binding on the people, are not the people the proper persons to examine its merits or defects? I take this to be one of the least and most trivial objections that will be made to the Constitution; it carries the answer with itself. In the whole of this business, I have acted in the strictest obedience to the dictates of my conscience, in discharging what I conceive to be my duty to my country. I refused my signature, and if the same reasons operated on my mind, I would still refuse; but as I think that those eight states which have adopted the Constitution will not recede, I am a friend to the Union.

Mr. GEORGE MASON. Mr. Chairman, whether the Constitution be good or bad, the present clause clearly discovers that it is a national government, and no longer a Confederation. I mean that clause which gives the first hint of the general government laying direct taxes. The assumption of this power of laying direct taxes does, of itself, entirely change the confederation of the states into one consolidated government. This power, being at discretion, unconfined, and without any kind of control, must carry every thing before it. The very idea of converting what was formerly a confederation to a consolidated government, is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the state governments. Will the people of this great community submit to be individually taxed by two different and distinct powers? Will they suffer themselves to be doubly harassed? These two concurrent powers cannot exist long together; the one will destroy the other: the general government being paramount to, and in every respect more powerful than the state governments, the latter must give

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way to the former. Is it to be supposed that one national government will suit so extensive a country, embracing so many climates, and containing inhabitants so very different in manners, habits, and customs? It is ascertained, by history, that there never was a government over a very extensive country without destroying the liberties of the people: history also, supported by the opinions of the best writers, shows us that monarchy may suit a large territory, and despotic governments ever so extensive a country, but that popular governments can only exist in small territories. Is there a single example, on the face of the earth, to support a contrary opinion? Where is there one exception to this general rule? Was there ever an instance of a general national government extending over so extensive a country, abounding in such a variety of climates, &c., where the people retained their liberty? I solemnly declare that no man is a greater friend to a firm union of the American states than I am; but, sir, if this great end can be obtained without hazarding the rights of the people, why should we recur to such dangerous principles? Requisitions have been often refused, sometimes from an impossibility of complying with them; often from that great variety of circumstances which retards the collection of moneys; and perhaps sometimes from a wilful design of procrastinating. But why shall we give up to the national government this power, so dangerous in its nature, and for which its members will not have sufficient information? Is it not well known that what would be a proper tax in one state would be grievous in another? The gentleman who hath favored us with a eulogium in favor of this system, must, after all the encomiums he has been pleased to bestow upon it, acknowledge that our federal representatives must be unacquainted with the situation of their constituents. Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent. When a certain sum comes to be taxed, and the mode of levying to be fixed, they will lay the tax on that article which will be most productive and easiest in the collection, without consulting the real circumstances or convenience of a country, with which, in fact, they cannot be sufficiently acquainted.

The mode of levying taxes is of the utmost consequence; and yet here it is to be determined by those who have neither

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knowledge of our situation, nor a common interest with us, nor a fellow-feeling for us. The subject of taxation differs in three fourths, nay, I might say with truth, in four fifths of the states. If we trust the national government with an effectual way of raising the necessary sums, it is sufficient: every thing we do further is trusting the happiness and rights of the people. Why, then, should we give up this dangerous power of individual taxation? Why leave the manner of laying taxes to those who, in the nature of things, cannot be acquainted with the situation of those on whom they are to impose them, when it can be done by those who are well acquainted with it? If, instead of giving this oppressive power, we give them such an effectual alternative as will answer the purpose, without encountering the evil and danger that might arise from it, then I would cheerfully acquiesce; and would it not be far more eligible? I candidly acknowledge the inefficacy of the Confederation; but requisitions have been made which were impossible to be complied with — requisitions for more gold and silver than were in the United States. If we give the general government the power of demanding their quotas of the states, with an alternative of laying direct taxes in case of non-compliance, then the mischief would be avoided; and the certainty of this conditional power would, in all human probability, prevent the application, and the sums necessary for the Union would be then laid by the states, by those who know how it can best be raised, by those who have a fellow-feeling for us. Give me leave to say, that the sum raised one way with convenience and ease, would be very oppressive another way. Why, then, not leave this power to be exercised by those who know the mode most convenient for the inhabitants, and not by those who must necessarily apportion it in such manner as shall be oppressive? With respect to the representation so much applauded, I cannot think it such a full and free one as it is represented; but I must candidly acknowledge that this defect results from the very nature of the government. It would be impossible to have a full and adequate representation in the general government; it would be too expensive and too unwieldy. We are, then, under the necessity of having this a very inadequate representation. Is this general representation to be compared with the real, actual, substantial representation of

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the state legislatures? It cannot bear a comparison. To make representation real and actual, the number of representatives ought to be adequate; they ought to mix with the people, think as they think, feel as they feel,—ought to be perfectly amenable to them, and thoroughly acquainted with their interest and condition. Now, these great ingredients are either not at all, or in a small degree, to be found in our federal representatives; so that we have no real, actual, substantial representation: but I acknowledge it results from the nature of the government. The necessity of this inconvenience may appear a sufficient reason not to argue against it; but, sir, it clearly shows that we ought to give power with a sparing hand to a government thus imperfectly constructed. To a government which, in the nature of things, cannot but be defective, no powers ought to be given but such as are absolutely necessary. There is one thing in it which I conceive to be extremely dangerous. Gentlemen may talk of public virtue and confidence; we shall be told that the House of Representatives will consist of the most virtuous men on the continent, and that in their hands we may trust our dearest rights. This, like all other assemblies, will be composed of some bad and some good men; and, considering the natural lust of power so inherent in man, I fear the thirst of power will prevail to oppress the people. What I conceive to be so dangerous, is the provision with respect to the number of representatives: it does not expressly provide that we shall have one for every thirty thousand, but that the number shall not exceed that proportion. The utmost that we can expect (and perhaps that is too much) is, that the present number shall be continued to us; — "the number of representatives shall not exceed one for every thirty thousand." Now, will not this be complied with, although the present number should never be increased — nay, although it should be decreased? Suppose Congress should say that we should have one for every forty thousand; will not the Constitution be complied with? — for one for every forty thousand does not exceed one for every thirty thousand. There is a want of proportion that ought to be strictly guarded against. The worthy gentleman tells us that we have no reason to fear; but I always fear for the rights of the people. I do not pretend to inspiration; but I think it is apparent as the day, that the

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members will attend to local, partial interests, to prevent an augmentation of their number. I know not how they will be chosen, but, whatever be the mode of choosing, our present number will be ten; and suppose our state is laid off in ten districts, — those gentlemen who shall be sent from those districts will lessen their own power and influence in their respective districts if they increase their number; for the greater the number of men among whom any given quantum of power is divided, the less the power of each individual. Thus they will have a local interest to prevent the increase of, and perhaps they will lessen their own number. This is evident on the face of the Constitution: so loose an expression ought to be guarded against, for Congress will be clearly within the requisition of the Constitution, although the number of representatives should always continue what it is now, and the population of the country should increase to an immense number. Nay, they may reduce the number from sixty-five to one from each state, without violating the Constitution; and thus the number, which is now too small, would then be infinitely too much so. (But my principal objection is, that the Confederation is converted to one general consolidated government, which, from my best judgment of it, (and which perhaps will be shown, in the course of this discussion, to be really well founded,) is one of the worst curses that can possibly befall a nation.) Does any man suppose that one general national government can exist in so extensive a country as this? I hope that a government may be framed which may suit us, by drawing a line between the general and state governments, and prevent that dangerous clashing of interest and power, which must, as it now stands, terminate in the destruction of one or the other. (When we come to the judiciary, we shall be more convinced that this government will terminate in the annihilation of the state governments: the question then will be, whether a consolidated government can preserve the freedom and secure the rights of the people.

(If such amendments be introduced as shall exclude danger, I shall most gladly put my hand to it.) When such amendments as shall, from the best information, secure the great essential rights of the people, shall be agreed to by gentlemen, I shall most heartily make the greatest concessions, and

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concur in any reasonable measure to obtain the desirable end of conciliation and unanimity. An indispensable amendment in this case is, that Congress shall not exercise the power of raising direct taxes till the states shall have refused to comply with the requisitions of Congress. On this condition it may be granted; but I see no reason to grant it uncondition ally, as the states can raise the taxes with more ease, and lay them on the inhabitants with more propriety, than it is possible for the general government to do. If Congress hath this power without control, the taxes will be laid by those who have no fellow-feeling or acquaintance with the people. This is my objection to the article now under consideration. It is a very great and important one. I therefore beg gentlemen to consider it. Should this power be restrained, I shall withdraw my objections to this part of the Constitution; but as it stands, it is an objection so strong in my mind, that its amendment is with me a *sine qua non* of its adoption. I wish for such amendments, and such only, as are necessary to secure the dearest rights of the people.

Mr. MADISON. Mr. Chairman, it would give me great pleasure to concur with my honorable colleague in any conciliatory plan. The clause to which the worthy member alludes is only explanatory of the proportion which representation and taxation shall respectively bear to one another. The power of laying direct taxes will be more properly discussed, when we come to that part of the Constitution which vests that power in Congress. At present, I must endeavor to reconcile our proceedings to the resolution we have taken, by postponing the examination of this power till we come properly to it. With respect to converting the confederation to a complete consolidation, I think no such consequence will follow from the Constitution, and that, with more attention, we shall see that he is mistaken; and with respect to the number of representatives, I reconcile it to my mind, when I consider that it may be increased to the proportion fixed, and that, as it may be so increased, *it shall*, because it is the interest of those who alone can prevent it, who are our representatives, and who depend on their good behavior for their reëlection. Let me observe, also, that, as far as the number of representatives may seem to be adequate to discharge their duty, they will have sufficient information from the laws of particular states, from the state legislatures, from

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their own experience, and from a great number of individuals; and as to our security against them, I conceive, sir, that the general limitation of their powers, and the general watchfulness of the states, will be a sufficient guard. As it is now late, I shall defer any further investigation till a more convenient time.

The committee then rose, and on motion

Resolved, That this Convention will, to-morrow, again resolve itself into a committee of the whole Convention, to take into further consideration the proposed Constitution of government.

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

THURSDAY, June 5, 1788.

Mr. HARRISON reported, from the committee of privileges and elections, that the committee had, according to order, had under their consideration the petition of Samuel Anderson, to them referred, and had come to a resolution thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same was again twice read, and agreed to by the house, as followeth:—

Resolved, That it is the opinion of this committee, That the petition of the said Samuel Anderson, praying that the election of Mr. Thomas H. Drew, a member returned to serve in this Convention for the county of Cumberland, may be set aside, and a new election had to supply his place, be rejected.

Mr. HARRISON reported, from the committee of privileges and elections, that the committee had, according to order, examined the returns of the election of delegates to serve in this Convention for the county of Westmoreland, and had come to a resolution thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same was again twice read, and agreed to by the house, as followeth: —

Resolved, That it is the opinion of this committee, That the return of the election of delegates to serve in this Convention, for the said county of Westmoreland, is satisfactory.

The Convention, according to the order of the day, resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government. Mr. Wythe in the chair.

The first and second sections still under consideration.

Mr. PENDLETON. Mr. Chairman, my worthy friend (Mr. Henry) has expressed great uneasiness in his mind.

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D. M. Blackburn, June 5, 1881.

and informed us that a great many of our citizens are also extremely uneasy, at the proposal of changing our government; but that, a year ago, before this fatal system was thought of, the public mind was at perfect repose. It is necessary to inquire whether the public mind was at ease on the subject, and if it be since disturbed, what was the cause. What was the situation of this country before the meeting of the federal Convention? Our general government was totally inadequate to the purpose of its institution; our commerce decayed; our finances deranged; public and private credit destroyed: these and many other national evils rendered necessary the meeting of that Convention. If the public mind was then at ease, it did not result from a conviction of being in a happy and easy situation: it must have been an inactive, unaccountable stupor. The federal Convention devised the paper on your table as a remedy to remove our political diseases. What has created the public uneasiness since? Not public reports, which are not to be depended upon; but mistaken apprehensions of danger, drawn from observations on government which do not apply to us. When we come to inquire into the origin of most governments of the world, we shall find that they are generally dictated by a conqueror, at the point of the sword, or are the offspring of confusion, when a great popular leader, taking advantage of circumstances, if not producing them, restores order at the expense of liberty, and becomes the tyrant over the people. It may well be supposed that, in forming a government of this sort, it will not be favorable to liberty: the conqueror will take care of his own emoluments, and have little concern for the interest of the people. In either case, the interest and ambition of a despot, and not the good of the people, have given the tone to the government. A government thus formed must necessarily create a continual war between the governors and governed.

Writers consider the two parties (the people and tyrants) as in a state of perpetual warfare, and sound the alarm to the people. But what is our case? We are perfectly free from sedition and war: we are not yet in confusion: we are left to consider our real happiness and security: we want to secure these objects: we know they cannot be attained without government. Is there a single man, in this committee, of a contrary opinion? What was it that brought us from a

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state of nature to society, but to secure happiness? And can society be formed without government? Personify government: apply to it as a friend to assist you, and it will grant your request. This is the only government founded in real compact. There is no quarrel between government and liberty; the former is the shield and protector of the latter. The war is between government and licentiousness, faction, turbulence, and other violations of the rules of society, to preserve liberty. Where is the cause of alarm? We, the people, possessing all power, form a government, such as we think will secure happiness: and suppose, in adopting this plan, we should be mistaken in the end; where is the cause of alarm on that quarter? In the same plan we point out an easy and quiet method of reforming what may be found amiss. No, but, say gentlemen, we have put the introduction of that method in the hands of our servants, who will interrupt it from motives of self-interest. What then? We will resist, did my friend say? conveying an idea of force. Who shall dare to resist the people? No, we will assemble in Convention; wholly recall our delegated powers, or reform them so as to prevent such abuse; and punish those servants who have perverted powers, designed for our happiness, to their own emolument. We ought to be extremely cautious not to be drawn into dispute with regular government, by faction and turbulence, its natural enemies. Here, then, sir, there is no cause of alarm on this side; but on the other side, rejecting of government, and dissolving of the Union, produce confusion and despotism.

But an objection is made to the form: the expression, We, the people, is thought improper. Permit me to ask the gentleman who made this objection, who but the people can delegate powers? Who but the people have a right to form government? The expression is a common one, and a favorite one with me. The representatives of the people, by their authority, is a mode wholly inessential. If the objection be, that the Union ought to be not of the people, but of the state governments, then I think the choice of the former very happy and proper. What have the state governments to do with it? Were they to determine, the people would not, in that case, be the judges upon what terms it was adopted.

But the power of the Convention is doubted. What is the power? To propose, not to determine. This power

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of proposing was very broad; it extended to remove all defects in government: the members of that Convention, who were to consider all the defects in our general government, were not confined to any particular plan. Were they deceived? This is the proper question here. Suppose the paper on your table dropped from one of the planets; the people found it, and sent us here to consider whether it was proper for their adoption; must we not obey them? Then the question must be between this government and the Confederation. The latter is no government at all. It has been said that it has carried us, through a dangerous war, to a happy issue. Not that Confederation, but common danger, and the spirit of America, were bonds of our union: union and unanimity, and not that insignificant paper, carried us through that dangerous war. "United, we stand — divided, we fall!" echoed and reëchoed through America — from Congress to the drunken carpenter — was effectual, and procured the end of our wishes, though now forgotten by gentlemen, if such there be, who incline to let go this stronghold, to catch at feathers; for such all substituted projects may prove.

This spirit had nearly reached the end of its power when relieved by peace. It was the spirit of America, and not the Confederation, that carried us through the war: thus I prove it. The moment of peace showed the imbecility of the federal government: Congress was empowered to make war and peace; a peace they made, giving us the great object, independence, and yielding us a territory that exceeded my most sanguine expectations. Unfortunately, a single disagreeable clause, not the object of the war, has retarded the performance of the treaty on our part. Congress could only recommend its performance, not enforce it; our last Assembly (to their honor be it said) put this on its proper grounds — on honorable grounds; it was as much as they ought to have done. This single instance shows the imbecility of the Confederation; the debts contracted by the war were unpaid; demands were made on Congress; all that Congress was able to do was to make an estimate of the debt, and proportion it among the several states; they sent on the requisitions, from time to time, to the states, for their respective quotas. These were either complied with partially, or not at all. Repeated demands on Congress dis-

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tressed that honorable body; but they were unable to fulfil those engagements, as they so earnestly wished. What was the idea of other nations respecting America? What was the idea entertained of us by those nations to whom we were so much indebted? The inefficacy of the general government warranted an idea that we had no government at all. Improvements were proposed, and agreed to by twelve states; but were interrupted, because the little state of Rhode Island refused to accede to them. This was a further proof of the imbecility of that government. Need I multiply instances to show that it is wholly ineffectual for the purposes of its institution? Its whole progress since the peace proves it.

Shall we then, sir, continue under such a government, or shall we introduce that kind of government which shall produce the real happiness and security of the people? When gentlemen say that we ought not to introduce this new government, but strengthen the hands of Congress, they ought to be explicit. In what manner shall this be done? If the union of the states be necessary, government must be equally so; for without the latter, the former cannot be effected. Government must then have its complete powers, or be ineffectual; a legislature to fix rules, impose sanctions, and point out the punishment of the transgressors of these rules; an executive to watch over officers, and bring them to punishment; a judiciary, to guard the innocent, and fix the guilty, by a fair trial. Without an executive, offenders would not be brought to punishment; without a judiciary, any man might be taken up, convicted, and punished without a trial. Hence the necessity of having these three branches. Would any gentleman in this committee agree to vest these three powers in one body — Congress? No. Hence the necessity of a new organization and distribution of those powers. If there be any feature in this government which is not republican, it would be exceptionable. From all the public servants responsibility is secured, by their being representatives, mediate or immediate, for short terms, and their powers defined. It is, on the whole complexion of it, a government of laws, not of men.

But it is represented to be a consolidated government, annihilating that of the states — a consolidated government, which so extensive a territory as the United States canno.

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admit of, without terminating in despotism. If this be such a government, I will confess, with my worthy friend, that it is inadmissible over such a territory as this country. Let us consider whether it be such a government or not. I should understand a consolidated government to be that which should have the sole and exclusive power, legislative, executive, and judicial, without any limitation. Is this such a government? Or can it be changed to such a one? It only extends to the general purposes of the Union. It does not intermeddle with the local, particular affairs of the states. Can Congress legislate for the state of Virginia? Can they make a law altering the form of transferring property, or the rule of descents, in Virginia? In one word, can they make a single law for the individual, exclusive purpose of any one state? It is the interest of the federal to preserve the state governments; upon the latter the existence of the former depends: the Senate derives its existence immediately from the state legislatures; and the representatives and President are elected under their direction and control; they also preserve order among the citizens of their respective states, and without order and peace no society can possibly exist. Unless, therefore, there be state legislatures to continue the existence of Congress, and preserve order and peace among the inhabitants, this general government, which gentlemen suppose will annihilate the state governments, must itself be destroyed. When, therefore, the federal government is, in so many respects, so absolutely dependent on the state governments, I wonder how any gentleman, reflecting on the subject, could have conceived an idea of a possibility of the former destroying the latter. But the power of laying direct taxes is objected to. Government must be supported; this cannot be done without a revenue: if a sufficient revenue be not otherwise raised, recurrence must be had to direct taxation; gentlemen admit this, but insist on the propriety of first applying to the state legislatures.

Let us consider the consequence that would result from this. In the first place, time would be lost by it. Congress would make requisitions in December; our legislature do not meet till October; here would be a considerable loss of time, admitting the requisitions to be fully complied with. But suppose the requisitions to be refused; would it not be dangerous to send a collector, to collect the Congressional

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taxes, after the state legislature had absolutely refused to comply with the demands of Congress? Would not resistance to collectors be the probable consequence? Would not this resistance terminate in confusion, and a dissolution of the Union? The concurrent power of two different bodies laying direct taxes, is objected to. These taxes are for two different purposes, and cannot interfere with one another. I can see no danger resulting from this; and we must suppose that a very small sum more than the impost would be sufficient. But the representation is supposed too small. I confess, I think with the gentleman who opened the debate (Mr. Nicholas) on this subject; and I think he gave a very satisfactory answer to this objection, when he observed that, though the number might be insufficient to convey information of necessary local interests to a state legislature, yet it was sufficient for the federal legislature, who are to act only on general subjects, in which this state is concerned in common with other states. The apportionment of representation and taxation by the same scale is just; it removes the objection, that, while Virginia paid one sixth part of the expenses of the Union, she had no more weight in public counsels than Delaware, which paid but a very small portion. By this just apportionment she is put on a footing with the small states, in point of representation and influence in councils. I cannot imagine a more judicious principle than is here fixed by the Constitution — the number shall not exceed one for every thirty thousand. But it is objected that the number may be less. If Virginia sends in that proportion, I ask, Where is the power in Congress to reject them? States might incline to send too many; they are therefore restrained: but can it be doubted that they will send the number they are entitled to? We may be therefore sure, from this principle unequivocally fixed in the Constitution, that the number of our representatives will be in proportion to the increase or decrease of our population. I can truly say that I am of no party, nor actuated by any influence, but the true interest and real happiness of those whom I represent; and my age and situation, I trust, will sufficiently demonstrate the truth of this assertion. I cannot conclude without adding, that I am perfectly satisfied with this part of the system.

Mr. LEE, (of Westmoreland.) Mr. Chairman, I feel

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every power of my mind moved by the language of the honorable gentleman yesterday. The *éclat* and brilliancy which have distinguished that gentleman, the honors with which he has been dignified, and the brilliant talents which he has so often displayed, have attracted my respect and attention. On so important an occasion, and before so respectable a body, I expected a new display of his powers of oratory; but, instead of proceeding to investigate the merits of the new plan of government, the worthy character informed us of horrors which he felt, of apprehensions to his mind, which made him tremblingly fearful of the fate of the commonwealth. Mr. Chairman, was it proper to appeal to the fears of this house? The question before us belongs to the judgment of this house. I trust he is come to judge, and not to alarm. I trust that he, and every other gentleman in this house, comes with a firm resolution coolly and calmly to examine, and fairly and impartially to determine. He was pleased to pass a eulogium on that character who is the pride of peace and support of war; and declared that even from him he would require the reason of proposing such a system. I cannot see the propriety of mentioning that illustrious character on this occasion; we must be all fully impressed with a conviction of his extreme rectitude of conduct. But, sir, this system is to be examined by its own merit. He then adverted to the style of government, and asked what authority they had to use the expression, "We, the people," and not We, the states. This expression was introduced into that paper with great propriety. This system is submitted to the people for their consideration, because on them it is to operate, if adopted. It is not binding on the people until it becomes their act. It is now submitted to the people of Virginia. If we do not adopt it, it will be always null and void as to us. Suppose it was found proper for our adoption, and becoming the government of the people of Virginia; by what style should it be done? Ought we not to make use of the name of the people? No other style would be proper. He then spoke of the characters of the gentlemen who framed it. This was inapplicable, strange, and unexpected: it was a more proper inquiry whether such evils existed as rendered necessary a change of government.

This necessity is evidenced by the concurrent testimony of almost all America. The legislative acts of different

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states avow it. It is acknowledged by the acts of this state under such an act we are here now assembled. If reference to the acts of the assemblies will not sufficiently convince him of this necessity, let him go to our seaports; let him see our commerce languishing — not an American bottom to be seen; let him ask the price of land, and of produce, in different parts of the country: to what cause shall we ascribe the very low prices of these? To what cause are we to attribute the decrease of population and industry, and the impossibility of employing our tradesmen and mechanics? To what cause will the gentleman impute these and a thousand other misfortunes our people labor under? These, sir, are owing to the imbecility of the Confederation; to that defective system which never can make us happy at home nor respectable abroad. The gentleman sat down as he began, leaving us to ruminate on the horrors which he opened with. Although I could trust to the argument of the gentleman who spoke yesterday in favor of the plan, permit me to make one observation on the weight of our representatives in the government. If the House of Commons, in England, possessing less power, are now able to withstand the power of the crown, — if that House of Commons, which has been undermined by corruption in every age, and contaminated by bribery even in this enlightened age, with far less powers than our representatives possess, is still able to contend with the executive of that country, — what danger have we to fear that our representatives cannot successfully oppose the encroachments of the other branches of the government? Let it be remembered that, in the year 1782, the East India Bill was brought into the House of Commons. Although the members of that house are only elected in part by the landed interest, yet, in spite of ministerial influence, that bill was carried in that house by a majority of one hundred and thirty, and the king was obliged to dissolve the Parliament to prevent its effect. If, then, the House of Commons was so powerful, no danger can be apprehended that our House of Representatives is not amply able to protect our liberties. I trust that this representation is sufficient to secure our happiness, and that we may fairly congratulate ourselves on the superiority of our government to that I just referred to.

Mr. HENRY. Mr. Chairman, I am much obliged to the

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very worthy gentleman for his encomium. I wish I was possessed with talents, or possessed of any thing that might enable me to elucidate this great subject. I am not free from suspicion: I am apt to entertain doubts. I rose yesterday to ask a question which arose in my own mind. When I asked that question, I thought the meaning of my interrogation was obvious. The fate of this question and of America may depend on this. Have they said, We, the states? Have they made a proposal of a compact between states? If they had, this would be a confederation. It is otherwise most clearly a consolidated government. The question turns, sir, on that poor little thing — the expression, We, the *people*, instead of the *states*, of America. I need not take much pains to show that the principles of this system are extremely pernicious, impolitic, and dangerous. Is this a monarchy, like England — a compact between prince and people, with checks on the former to secure the liberty of the latter? Is this a confederacy, like Holland — an association of a number of independent states, each of which retains its individual sovereignty? It is not a democracy, wherein the people retain all their rights securely. Had these principles been adhered to, we should not have been brought to this alarming transition, from a confederacy to a consolidated government. We have no detail of these great considerations, which, in my opinion, ought to have abounded before we should recur to a government of this kind. Here is a resolution as radical as that which separated us from Great Britain. It is radical in this transition; our rights and privileges are endangered, and the sovereignty of the states will be relinquished: and cannot we plainly see that this is actually the case? The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change, so loudly talked of by some, and inconsiderately by others. Is this tame relinquishment of rights worthy of freemen? Is it worthy of that manly fortitude that ought to characterize republicans? It is said eight states have adopted this plan. I declare that if twelve states and a half had adopted it, I would, with manly firmness, and in spite of an erring world, reject it. You are not to inquire how your trade may be increased, nor how you are to become a great and powerful

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people, but how your liberties can be secured; for liberty ought to be the direct end of your government.

Having premised these things, I shall, with the aid of my judgment and information, which, I confess, are not extensive, go into the discussion of this system more minutely. Is it necessary for your liberty that you should abandon those great rights by the adoption of this system? Is the relinquishment of the trial by jury and the liberty of the press necessary for your liberty? Will the abandonment of your most sacred rights tend to the security of your liberty? Liberty, the greatest of all earthly blessings — give us that precious jewel, and you may take every thing else! But I am fearful I have lived long enough to become an old-fashioned fellow. Perhaps an invincible attachment to the dearest rights of man may, in these refined, enlightened days, be deemed old-fashioned; if so, I am contented to be so. I say, the time has been when every pulse of my heart beat for American liberty, and which, I believe, had a counterpart in the breast of every true American; but suspicions have gone forth — suspicions of my integrity — publicly reported that my professions are not real. Twenty-three years ago was I supposed a traitor to my country? I was then said to be the bane of sedition, because I supported the rights of my country. I may be thought suspicious when I say our privileges and rights are in danger. But, sir, a number of the people of this country are weak enough to think these things are too true. I am happy to find that the gentleman on the other side declares they are groundless. But, sir, suspicion is a virtue as long as its object is the preservation of the public good, and as long as it stays within proper bounds: should it fall on me, I am contented: conscious rectitude is a powerful consolation. I trust there are many who think my professions for the public good to be real. Let your suspicion look to both sides. There are many on the other side, who possibly may have been persuaded to the necessity of these measures, which I conceive to be dangerous to your liberty Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are inevitably ruined. I am answered by gentlemen, that, though I might speak of terrors, yet the fact was, that we were surrounded by none of the

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dangers I apprehended. I conceive this new government to be one of those dangers: it has produced those horrors which distress many of our best citizens. We are come hither to preserve the poor commonwealth of Virginia, if it can be possibly done: something must be done to preserve your liberty and mine. The Confederation, this same despised government, merits, in my opinion, the highest encomium: it carried us through a long and dangerous war; it rendered us victorious in that bloody conflict with a powerful nation; it has secured us a territory greater than any European monarch possesses: and shall a government which has been thus strong and vigorous, be accused of imbecility, and abandoned for want of energy? Consider what you are about to do before you part with the government. Take longer time in reckoning things; revolutions like this have happened in almost every country in Europe; similar examples are to be found in ancient Greece and ancient Rome — instances of the people losing their liberty by their own carelessness and the ambition of a few. We are cautioned by the honorable gentleman, who presides, against faction and turbulence. I acknowledge that licentiousness is dangerous, and that it ought to be provided against: I acknowledge, also, the new form of government may effectually prevent it: yet there is another thing it will as effectually do — it will oppress and ruin the people.

There are sufficient guards placed against sedition and licentiousness; for, when power is given to this government to suppress these, or for any other purpose, the language it assumes is clear, express, and unequivocal; but when this Constitution speaks of privileges, there is an ambiguity, sir, a fatal ambiguity — an ambiguity which is very astonishing. In the clause under consideration, there is the strangest language that I can conceive. I mean, when it says that there shall not be more representatives than one for every thirty thousand. Now, sir, how easy is it to evade this privilege! "The number shall not exceed one for every thirty thousand." This may be satisfied by one representative from each state. Let our numbers be ever so great, this immense continent may, by this artful expression, be reduced to have but thirteen representatives. I confess this construction is not natural; but the ambiguity of the expression lays a good ground for a quarrel. Why was it not clearly and unequivocally

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expressed, that they should be entitled to have one for every thirty thousand? This would have obviated all disputes; and was this difficult to be done? What is the inference? When population increases, and a state shall send representatives in this proportion, Congress *may* remand them, because the right of having one for every thirty thousand is not clearly expressed. This possibility of reducing the number to one for each state approximates to probability by that other expression — "but each state shall at least have one representative." Now, is it not clear that, from the first expression, the number might be reduced so much that some states should have no representatives at all, were it not for the insertion of this last expression? And as this is the only restriction upon them, we may fairly conclude that they *may* restrain the number to one from each state. Perhaps the same horrors may hang over my mind again. I shall be told I am continually afraid: but, sir, I have strong cause of apprehension. In some parts of the plan before you, the great rights of freemen are endangered; in other parts, absolutely taken away. How does your trial by jury stand? In civil cases gone — not sufficiently secured in criminal — this best privilege is gone. But we are told that we need not fear; because those in power, being our representatives, will not abuse the powers we put in their hands. I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people, or by the tyranny of rulers. I imagine, sir, you will find the balance on the side of tyranny. Happy will you be if you miss the fate of those nations, who, omitting to resist their oppressors, or negligently suffering their liberty to be wrested from them, have groaned under intolerable despotism! Most of the human race are now in this deplorable condition; and those nations who have gone in search of grandeur, power, and splendor, have also fallen a sacrifice, and been the victims of their own folly. While they acquired those visionary blessings, they lost their freedom. My great objection to this government is, that it does not leave us the means of defending our rights, or of waging war against tyrants. It is urged by some gentlemen, that this new plan will bring us an acquisition of strength — an army, and the militia of the states. This is an idea extremely ridiculous: gentlemen cannot be earnest. This ac-

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quisition will trample on our fallen liberty. Let my beloved Americans guard against that fatal lethargy that has pervaded the universe. Have we the means of resisting disciplined armies, when our only defence, the militia, is put into the hands of Congress? The honorable gentleman said that great danger would ensue if the Convention rose without adopting this system. I ask, Where is that danger? I see none. Other gentlemen have told us, within these walls, that the union is gone, or that the union will be gone. Is not this trifling with the judgment of their fellow-citizens? Till they tell us the grounds of their fears, I will consider them as imaginary. I rose to make inquiry where those dangers were; they could make no answer: I believe I never shall have that answer. Is there a disposition in the people of this country to revolt against the dominion of laws? Has there been a single tumult in Virginia? Have not the people of Virginia, when laboring under the severest pressure of accumulated distresses, manifested the most cordial acquiescence in the execution of the laws? What could be more awful than their unanimous acquiescence under general distresses? Is there any revolution in Virginia? Whither is the spirit of America gone? Whither is the genius of America fled? It was but yesterday, when our enemies marched in triumph through our country. Yet the people of this country could not be appalled by their pompous armaments: they stopped their career, and victoriously captured them. Where is the peril, now, compared to that? Some minds are agitated by foreign alarms. Happily for us, there is no real danger from Europe; that country is engaged in more arduous business: from that quarter there is no cause of fear: you may sleep in safety forever for them.

Where is the danger? If, sir, there was any, I would recur to the American spirit to defend us; that spirit which has enabled us to surmount the greatest difficulties; to that illustrious spirit I address my most fervent prayer to prevent our adopting a system destructive to liberty. Let not gentlemen be told that it is not safe to reject this government. Wherefore is it not safe? We are told there are dangers, but those dangers are ideal; they cannot be demonstrated. To encourage us to adopt it, they tell us that there is a plain, easy way of getting amendments. When I come to contemplate this part, I suppose that I am mad, or that my

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countrymen are so. The way to amendment is, in my conception, shut. Let us consider this plain, easy way. "The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the legislatures of two thirds of the several states, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by the Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the 1st and 4th clauses in the 9th section of the 1st article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

Hence it appears that three fourths of the states must ultimately agree to any amendments that may be necessary. Let us consider the consequence of this. However uncharitable it may appear, yet I must tell my opinion — that the most unworthy characters may get into power, and prevent the introduction of amendments. Let us suppose — for the case is supposable, possible, and probable — that you happen to deal those powers to unworthy hands; will they relinquish powers already in their possession, or agree to amendments? Two thirds of the Congress, or of the state legislatures, are necessary even to propose amendments. If one third of these be unworthy men, they may prevent the application for amendments; but what is destructive and mischievous, is, that three fourths of the state legislatures, or of the state conventions, must concur in the amendments when proposed! In such numerous bodies, there must necessarily be some designing, bad men. To suppose that so large a number as three fourths of the states will concur, is to suppose that they will possess genius, intelligence, and integrity, approaching to miraculous. It would indeed be miraculous that they should concur in the same amendments, or even in such as would bear some likeness to one another; for four of the smallest states, that do not collectively contain one tenth part of the population of the United States, may obstruct the most salutary and necessary amendments. Nay, in these four states, six tenths of the people may reject

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these amendments; and suppose that amendments shall be opposed to amendments, which is highly probable, — is it possible that three fourths can ever agree to the same amendments? A bare majority in these four small states may hinder the adoption of amendments; so that we may fairly and justly conclude that one twentieth part of the American people may prevent the removal of the most grievous inconveniences and oppression, by refusing to accede to amendments. A trifling minority may reject the most salutary amendments. Is this an easy mode of securing the public liberty? It is, sir, a most fearful situation, when the most contemptible minority can prevent the alteration of the most oppressive government; for it may, in many respects, prove to be such. Is this the spirit of republicanism?

What, sir, is the genius of democracy? Let me read that clause of the bill of rights of Virginia which relates to this: 3d clause: — that government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community. Of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that whenever any government shall be found inadequate, or contrary to those purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

This, sir, is the language of democracy — that a majority of the community have a right to alter government when found to be oppressive. But how different is the genius of your new Constitution from this! How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority! If, then, gentlemen, standing on this ground, are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I am amazed and inexpressibly astonished. If this be the opinion of the majority, I must submit; but to me, sir, it appears perilous and destructive. I cannot help thinking so. Perhaps it may be the result of my age. These may be feelings natural to a man of my years, when the American spirit has left him, and his mental powers, like the members of the body, are decayed. If, sir, amendments

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are left to the twentieth, or tenth part of the people of America, your liberty is gone forever. We have heard that there is a great deal of bribery practised in the House of Commons, in England, and that many of the members raise themselves to preferments by selling the rights of the whole of the people. But, sir, the tenth part of that body cannot continue oppressions on the rest of the people. English liberty is, in this case, on a firmer foundation than American liberty. It will be easily contrived to procure the opposition of one tenth of the people to any alteration, however judicious. The honorable gentleman who presides told us that, to prevent abuses in our government, we will assemble in Convention, recall our delegated powers, and punish our servants for abusing the trust reposed in them. O sir, we should have fine times, indeed, if, to punish tyrants, it were only sufficient to assemble the people! Your arms, wherewith you could defend yourselves, are gone; and you have no longer an aristocratical, no longer a democratical spirit. Did you ever read of any revolution in a nation, brought about by the punishment of those in power, inflicted by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbors cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America.

A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives a power of direct taxation, unbounded and unlimited, exclusive power of legislation, in all cases whatsoever, for ten miles square, and over all places purchased for the erection of forts, magazines, arsenals, dockyards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this country in the hands of your enemies; their garrisons will naturally be the strongest places in the country. Your militia is given up to Congress, also, in another part of this plan: they will therefore act as they think proper: all power will be in their own possession. You cannot force them to receive their punishment: of what service would militia be to you.

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when, most probably, you will not have a single musket in the state? for, as arms are to be provided by Congress, they may or may not furnish them.

Let me here call your attention to that part which gives the Congress power "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States — reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." By this, sir, you see that their control over our last and best defence is unlimited. If they neglect or refuse to discipline or arm our militia, they will be useless: the states can do neither — this power being exclusively given to Congress. The power of appointing officers over men not disciplined or armed is ridiculous; so that this pretended little remains of power left to the states may, at the pleasure of Congress, be rendered nugatory. Our situation will be deplorable indeed: nor can we ever expect to get this government amended, since I have already shown that a very small minority may prevent it, and that small minority interested in the continuance of the oppression. Will the oppressor let go the oppressed? Was there ever an instance? Can the annals of mankind exhibit one single example where rulers overcharged with power willingly let go the oppressed, though solicited and requested most earnestly? The application for amendments will therefore be fruitless. Sometimes, the oppressed have got loose by one of those bloody struggles that desolate a country; but a willing relinquishment of power is one of those things which human nature never was, nor ever will be, capable of.

The honorable gentleman's observations, respecting the people's right of being the agents in the formation of this government, are not accurate, in my humble conception. The distinction between a national government and a confederacy is not sufficiently discerned. Had the delegates, who were sent to Philadelphia, a power to propose a consolidated government instead of a confederacy? Were they not deputed by states, and not by the people? The assent of the people, in their collective capacity, is not necessary to the formation of a federal government. The people have no right to enter into leagues, alliances, or confederations;

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they are not the proper agents for this purpose. States and foreign powers are the only proper agents for this kind of government. Show me an instance where the people have exercised this business. Has it not always gone through the legislatures? I refer you to the treaties with France, Holland, and other nations. How were they made? Were they not made by the states? Are the people, therefore, in their aggregate capacity, the proper persons to form a confederacy? This, therefore, ought to depend on the consent of the legislatures, the people having never sent delegates to make any proposition for changing the government. Yet I must say, at the same time, that it was made on grounds the most pure; and perhaps I might have been brought to consent to it so far as to the change of government. But there is one thing in it which I never would acquiesce in. I mean, the changing it into a consolidated government, which is so abhorrent to my mind. [The honorable gentleman then went on to the figure we make with foreign nations; the contemptible one we make in France and Holland; which, according to the substance of the notes, he attributes to the present feeble government.] An opinion has gone forth, we find, that we are contemptible people: the time has been when we were thought otherwise. Under the same despised government, we commanded the respect of all Europe: wherefore are we now reckoned otherwise? The American spirit has fled from hence: it has gone to regions where it has never been expected; it has gone to the people of France, in search of a splendid government — a strong, energetic government. Shall we imitate the example of those nations who have gone from a simple to a splendid government? Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they have suffered in attaining such a government — for the loss of their liberty? If we admit this consolidated government, it will be because we like a great, splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things. When the American spirit was in its youth, the language of America was different: liberty, sir, was then the primary object. We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation

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of every thing. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. But now, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will not have sufficient energy to keep them together. Such a government is incompatible with the genius of republicanism. There will be no checks, no real balances, in this government. What can avail your specious, imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances? But, sir, we are not feared by foreigners; we do not make nations tremble. Would this constitute happiness, or secure liberty? I trust, sir, our political hemisphere will ever direct their operations to the security of those objects.

Consider our situation, sir: go to the poor man, and ask him what he does. He will inform you that he enjoys the fruits of his labor, under his own fig-tree, with his wife and children around him, in peace and security. Go to every other member of society,—you will find the same tranquil ease and content; you will find no alarms or disturbances. Why, then, tell us of danger, to terrify us into an adoption of this new form of government? And yet who knows the dangers that this new system may produce? They are out of the sight of the common people: they cannot foresee latent consequences. I dread the operation of it on the middling and lower classes of people: it is for them I fear the adoption of this system. I fear I tire the patience of the committee; but I beg to be indulged with a few more observations. When I thus profess myself an advocate for the liberty of the people, I shall be told I am a designing man, that I am to be a great man, that I am to be a demagogue; and many similar illiberal insinuations will be thrown out: but, sir, conscious rectitude outweighs those things with me. I see great jeopardy in this new government. I see none from our present one. I hope some gentleman or other will bring forth, in full array, those

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dangers, if there be any, that we may see and touch them. I have said that I thought this a consolidated government: I will now prove it. Will the great rights of the people be secured by this government? Suppose it should prove oppressive, how can it be altered? Our bill of rights declares, "that a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."

I have just proved that one tenth, or less, of the people of America—a most despicable minority—may prevent this reform or alteration. Suppose the people of Virginia should wish to alter their government; can a majority of them do it? No; because they are connected with other men, or, in other words, consolidated with other states. When the people of Virginia, at a future day, shall wish to alter their government, though they should be unanimous in this desire, yet they may be prevented therefrom by a despicable minority at the extremity of the United States. The founders of your own Constitution made your government changeable: but the power of changing it is gone from you. Whither is it gone? It is placed in the same hands that hold the rights of twelve other states; and those who hold those rights have right and power to keep them. It is not the particular government of Virginia: one of the leading features of that government is, that a majority can alter it, when necessary for the public good. This government is not a Virginian, but an American government. Is it not, therefore, a consolidated government? The sixth clause of your bill of rights tells you, "that elections of members to serve as representatives of the people in Assembly ought to be free, and that all men having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be *taxed*, or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good." But what does this Constitution say? The clause under consideration gives an unlimited and unbounded power of taxation. Suppose every delegate from Virginia opposes a law laying a tax; what will it avail? They are opposed by a majority; eleven members can destroy their efforts·

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those feeble ten cannot prevent the passing the most oppressive tax law; so that, in direct opposition to the spirit and express language of your declaration of rights, you are taxed, not by your own consent, but by people who have no connection with you.

The next clause of the bill of rights tells you, "that all power of suspending law, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised." This tells us that there can be no suspension of government or laws without our own consent; yet this Constitution can counteract and suspend any of our laws that contravene its oppressive operation; for they have the power of direct taxation, which suspends our bill of rights; and it is expressly provided that they can make all laws necessary for carrying their powers into execution; and it is declared paramount to the laws and constitutions of the states. Consider how the only remaining defence we have left is destroyed in this manner. Besides the expenses of maintaining the Senate and other house in as much splendor as they please, there is to be a great and mighty President, with very extensive powers — the powers of a king. He is to be supported in extravagant magnificence; so that the whole of our property may be taken by this American government, by laying what taxes they please, giving themselves what salaries they please, and suspending our laws at their pleasure. I might be thought too inquisitive, but I believe I should take up very little of your time in enumerating the little power that is left to the government of Virginia; for this power is reduced to little or nothing: their garrisons, magazines, arsenals, and forts, which will be situated in the strongest places within the states; their ten miles square, with all the fine ornaments of human life, added to their powers, and taken from the states, will reduce the power of the latter to nothing.

The voice of tradition, I trust, will inform posterity of our struggles for freedom. If our descendants be worthy the name of Americans, they will preserve, and hand down to their latest posterity, the transactions of the present times; and, though I confess my exclamations are not worthy the hearing, they will see that I have done my utmost to preserve their liberty; for I never will give up the power of direct taxation but for a scourge. I am willing to give it condition-

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ally; that is, after non-compliance with requisitions. I will do more, sir, and what I hope will convince the most skeptical man that I am a lover of the American Union — that, in case Virginia shall not make punctual payment, the control of our custom-houses, and the whole regulation of trade, shall be given to Congress, and that Virginia shall depend on Congress even for passports, till Virginia shall have paid the last farthing, and furnished the last soldier. Nay, sir, there is another alternative to which I would consent; — even that they should strike us out of the Union, and take away from us all federal privileges, till we comply with federal requisitions: but let it depend upon our own pleasure to pay our money in the most easy manner for our people. Were all the states, more terrible than the mother country, to join against us, I hope Virginia could defend herself; but, sir, the dissolution of the Union is most abhorrent to my mind. The first thing I have at heart is American liberty: the second thing is American union; and I hope the people of Virginia will endeavor to preserve that union. The increasing population of the Southern States is far greater than that of New England; consequently, in a short time, they will be far more numerous than the people of that country. Consider this, and you will find this state more particularly interested to support American liberty, and not bind our posterity by an improvident relinquishment of our rights. I would give the best security for a punctual compliance with requisitions; but I beseech gentlemen, at all hazards, not to give up this unlimited power of taxation. The honorable gentleman has told us that these powers, given to Congress, are accompanied by a judiciary which will correct all. On examination, you will find this very judiciary oppressively constructed; your jury trial destroyed, and the judges dependent on Congress.

In this scheme of energetic government, the people will find two sets of tax-gatherers — the state and the federal sheriffs. This, it seems to me, will produce such dreadful oppression as the people cannot possibly bear. The federal sheriff may commit what oppression, make what distresses, he pleases, and ruin you with impunity; for how are you to tie his hands? Have you any sufficiently decided means of preventing him from sucking your blood by speculations, commissions, and fees? Thus thousands of your people will be most shamefully robbed: our state sheriffs, those unfeeling blood-

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suckers, have, under the watchful eye of our legislature, committed the most horrid and barbarous ravages on our people. It has required the most constant vigilance of the legislature to keep them from totally ruining the people; a repeated succession of laws has been made to suppress their iniquitous speculations and cruel extortions; and as often has their nefarious ingenuity devised methods of evading the force of those laws: in the struggle they have generally triumphed over the legislature.

It is a fact that lands have been sold for five shillings, which were worth one hundred pounds: if sheriffs, thus immediately under the eye of our state legislature and judiciary, have dared to commit these outrages, what would they not have done if their masters had been at Philadelphia or New York? If they perpetrate the most unwarrantable outrage on your person or property, you cannot get redress on this side of Philadelphia or New York; and how can you get it there? If your domestic avocations could permit you to go thither, there you must appeal to judges sworn to support this Constitution, in opposition to that of any state, and who may also be inclined to favor their own officers. When these harpies are aided by excisemen, who may search, at any time, your houses, and most secret recesses, will the people bear it? If you think so, you differ from me. Where I thought there was a possibility of such mischiefs, I would grant power with a niggardly hand; and here there is a strong probability that these oppressions shall actually happen. I may be told that it is safe to err on that side, because such regulations may be made by Congress as shall restrain these officers, and because laws are made by our representatives, and judged by righteous judges: but, sir, as these regulations may be made, so they may not; and many reasons there are to induce a belief that they will not. I shall therefore be an infidel on that point till the day of my death.

This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting; it squints towards monarchy; and does not this raise indignation in the breast of every true American?

Your President may easily become king. Your Senate is so imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority; and a very small minority may continue forever unchangeably this government,

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although horridly defective. Where are your checks in this government? Your strongholds will be in the hands of your enemies. It is on a supposition that your American governors shall be honest, that all the good qualities of this government are founded; but its defective and imperfect construction puts it in their power to perpetrate the worst of mischiefs, should they be bad men; and, sir, would not all the world, from the eastern to the western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.

If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him, and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design; and, sir, will the American spirit solely relieve you when this happens? I would rather infinitely — and I am sure most of this Convention are of the same opinion — have a king, lords, and commons, than a government so replete with such insupportable evils. If we make a king, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them; but the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot with patience think of this idea. If ever he violates the laws, one of two things will happen: he will come at the head of his army, to carry every thing before him; or he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, sir, where is the existing force to punish him? Can he not, at the head of his army, beat down every opposition? Away with your

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President! we shall have a king: the army will salute him monarch: your militia will leave you, and assist in making him king, and fight against you: and what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue?

[Here Mr. HENRY strongly and pathetically expatiated on the probability of the President's enslaving America, and the horrid consequences that must result.]

What can be more defective than the clause concerning the elections? The control given to Congress over the time, place, and manner of holding elections, will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the state; or they may be at remote distances from those who have a right of suffrage: hence nine out of ten must either not vote at all, or vote for strangers; for the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat, that the control of Congress over the *manner*, &c., of electing, well warrants this idea. The natural consequence will be, that this democratic branch will possess none of the public confidence; the people will be prejudiced against representatives chosen in such an injudicious manner. The proceedings in the northern conclave will be hidden from the yeomanry of this country. We are told that the yeas and nays shall be taken, and entered on the journals. This, sir, will avail nothing: it may be locked up in their chests, and concealed forever from the people; for they are not to publish what parts they think require secrecy: they *may* think, and *will think*, the whole requires it. Another beautiful feature of this Constitution is, the publication from time to time of the receipts and expenditures of the public money.

This expression, *from time to time*, is very indefinite and indeterminate: it may extend to a century. Grant that any of them are wicked; they may squander the public money so as to ruin you, and yet this expression will give you no redress. I say they may ruin you; for where, sir, is the responsibility? The yeas and nays will show you nothing, unless they be fools as well as knaves; for, after having wickedly trampled on the rights of the people, they would act like fools indeed, were they to publish and divulge

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their iniquity, when they have it equally in their power to suppress and conceal it. Where is the responsibility — that leading principle in the British government? In that government, a punishment certain and inevitable is provided; but in this, there is no real, actual punishment for the grossest mal-administration. They may go without punishment, though they commit the most outrageous violation on our immunities. That paper may tell me they will be punished. I ask, By what law? They must make the law, for there is no existing law to do it. What! will they make a law to punish themselves?

This, sir, is my great objection to the Constitution, that there is no true responsibility — and that the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish themselves.

In the country from which we are descended, they have real and not imaginary responsibility; for their mal-administration has cost their heads to some of the most saucy geniuses that ever were. The Senate, by making treaties, may destroy your liberty and laws for want of responsibility. Two thirds of those that shall happen to be present, can, with the President, make treaties that shall be the supreme law of the land; they may make the most ruinous treaties; and yet there is no punishment for them. Whoever shows me a punishment provided for them will oblige me. So, sir, notwithstanding there are eight pillars, they want another. Where will they make another? I trust, sir, the exclusion of the evils wherewith this system is replete in its present form, will be made a condition precedent to its adoption by this or any other state. The transition, from a general unqualified admission to offices, to a consolidation of government, seems easy; for, though the American states are dissimilar in their structure, this will assimilate them. This, sir, is itself a strong consolidating feature, and is not one of the least dangerous in that system. Nine states are sufficient to establish this government over those nine. Imagine that nine have come into it. Virginia has certain scruples. Suppose she will, consequently, refuse to join with those states; may not she still continue in friendship and union with them? If she sends her annual requisitions in dollars, do you think their stomachs will be so squeamish as to refuse her dollars? Will they not accept her regiments?

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They would intimidate you into an inconsiderate adoption, and frighten you with ideal evils, and that the Union shall be dissolved. 'Tis a bugbear, sir: the fact is, sir, that the eight adopting states can hardly stand on their own legs. Public fame tells us that the adopting states have already heart-burnings and animosity, and repent their precipitate hurry: this, sir, may occasion exceeding great mischief. When I reflect on these and many other circumstances, I must think those states will be found to be in confederacy with us. If we pay our quota of money annually, and furnish our ratable number of men, when necessary, I can see no danger from a rejection.

The history of Switzerland clearly proves that we might be in amicable alliance with those states without adopting this Constitution. Switzerland is a confederacy, consisting of dissimilar governments. This is an example which proves that governments of dissimilar structures may be confederated. That confederate republic has stood upwards of four hundred years; and, although several of the individual republics are democratic, and the rest aristocratic, no evil has resulted from this dissimilarity; for they have braved all the power of France and Germany during that long period. The Swiss spirit, sir, has kept them together; they have encountered and overcome immense difficulties with patience and fortitude. In the vicinity of powerful and ambitious monarchs, they have retained their independence, republican simplicity, and valor. [Here he makes a comparison of the people of that country and those of France, and makes a quotation from Addison illustrating the subject.] Look at the peasants of that country and of France; and mark the difference. You will find the condition of the former far more desirable and comfortable. No matter whether the people be great, splendid, and powerful, if they enjoy freedom. The Turkish Grand Signior, alongside of our President, would put us to disgrace; but we should be as abundantly consoled for this disgrace, when our citizens have been put in contrast with the Turkish slave. The most valuable end of government is the liberty of the inhabitants. No possible advantages can compensate for the loss of this privilege Show me the reason why the American Union is to be dissolved. Who are those eight adopting states? Are they averse to give us a little time to consider, before we

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conclude? Would such a disposition render a junction with them eligible; or is it the genius of that kind of government to precipitate people hastily into measures of the utmost importance, and grant no indulgence? If it be, sir, is it for us to accede to such a government? We have a right to have time to consider; we shall therefore insist upon it. Unless the government be amended, we can never accept it. The adopting states will doubtless accept our money and our regiments; and what is to be the consequence, if we are disunited? I believe it is yet doubtful, whether it is not proper to stand by a while, and see the effect of its adoption in other states. In forming a government, the utmost care should be taken to prevent its becoming oppressive; and this government is of such an intricate and complicated nature, that no man on this earth can know its real operation. The other states have no reason to think, from the antecedent conduct of Virginia, that she has any intention of seceding from the Union, or of being less active to support the general welfare. Would they not, therefore, acquiesce in our taking time to deliberate — deliberate whether the measure be not perilous, not only for us, but the adopting states?

Permit me, sir, to say, that a great majority of the people, even in the adopting states, are averse to this government. I believe I would be right to say, that they have been egregiously misled. Pennsylvania has, *perhaps*, been tricked into it. If the other states who have adopted it have not been tricked, still they were too much hurried into its adoption. There were very respectable minorities in several of them; and if reports be true, a clear majority of the people are averse to it. If we also accede, and it should prove grievous, the peace and prosperity of our country, which we all love, will be destroyed. This government has not the affection of the people at present. Should it be oppressive, their affections will be totally estranged from it; and, sir, you know that a government, without their affections, can neither be durable nor happy. I speak as one poor individual; but when I speak, I speak the language of thousands. But, sir, I mean not to breathe the spirit, nor utter the language, of secession.

I have trespassed so long on your patience, I am really concerned that I have something yet to say. The honora-

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ble member has said, we shall be properly represented. Remember, sir, that the number of our representatives is but ten, whereof six is a majority. Will those men be possessed of sufficient information? A particular knowledge of particular districts will not suffice. They must be well acquainted with agriculture, commerce, and a great variety of other matters throughout the continent; they must know not only the actual state of nations in Europe and America, the situations of their farmers, cottagers, and mechanics, but also the relative situations and intercourse of those nations. Virginia is as large as England. Our proportion of representatives is but ten men. In England they have five hundred and fifty-eight. The House of Commons, in England, numerous as they are, we are told, are bribed, and have bartered away the rights of their constituents: what, then, shall become of us? Will these few protect our rights? Will they be incorruptible? You say they will be better men than the English commoners. I say they will be infinitely worse men, because they are to be chosen blindfolded: their election (the term, as applied to their appointment, is inaccurate) will be an involuntary nomination, and not a choice.

I have, I fear, fatigued the committee; yet I have not said the one hundred thousandth part of what I have on my mind, and wish to impart. On this occasion, I conceived myself bound to attend strictly to the interest of the state, and I thought her dearest rights at stake. Having lived so long — been so much honored — my efforts, though small, are due to my country. I have found my mind hurried on, from subject to subject, on this very great occasion. We have been all out of order, from the gentleman who opened to-day to myself. I did not come prepared to speak, on so multifarious a subject, in so general a manner. I trust you will indulge me another time. Before you abandon the present system, I hope you will consider not only its defects, most maturely, but likewise those of that which you are to substitute for it. May you be fully apprized of the dangers of the latter, not by fatal experience, but by some abler advocate than I!

Gov. RANDOLPH. Mr. Chairman, if we go on in this irregular manner, contrary to our resolution, instead of three or six weeks, it will take us six months to decide this question. I shall endeavor to make the committee sensible of

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the necessity of establishing a national government. In the course of my argument, I shall show the inefficacy of the Confederation. It is too late to enter into the subject now, but I shall take the first opportunity for that purpose. I mention this to show that I had not answered him fully, nor in a general way, yesterday.

FRIDAY, *June* 6, 1788.

The Convention, according to the order of the day, again resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government. Mr. Wythe in the chair.

[The 1st and 2d sections still under consideration.]

Gov. RANDOLPH. Mr. Chairman, I am a child of the revolution. My country, very early indeed, took me under its protection, at a time when I most wanted it, and, by a succession of favors and honors, gratified even my most ardent wishes. I feel the highest gratitude and attachment to my country; her felicity is the most fervent prayer of my heart. Conscious of having exerted my faculties to the utmost in her behalf, if I have not succeeded in securing the esteem of my countrymen, I shall reap abundant consolation from the rectitude of my intentions: honors, when compared to the satisfaction accruing from a conscious independence and rectitude of conduct, are no equivalent. The unwearied study of my life shall be to promote her happiness. As a citizen, ambition and popularity are no objects with me. I expect, in the course of a year, to retire to that private station which I most sincerely and cordially prefer to all others. The security of public justice, sir, is what I most fervently wish, as I consider that object to be the primary step to the attainment of public happiness. I can declare to the whole world, that, in the part I take in this very important question, I am actuated by a regard for what I conceive to be our true interest. I can also, with equal sincerity, declare that I would join heart and hand in rejecting this system, did I not conceive it would promote our happiness; but, having a strong conviction on my mind, at this time, that by a disunion we shall throw away all those blessings we have so earnestly fought for, and that a rejection of the Constitution will operate disunion, pardon me if I discharge the obligation I owe to my country, by voting for its adoption. We are told that the report of dangers is false. The cry of

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peace, sir, is false: say peace, when there is peace; it is but a sudden calm. The tempest growls over you: look round — wheresoever you look, you see danger. Where there are so many witnesses in many parts of America, that justice is suffocated, shall peace and happiness still be said to reign? Candor, sir, requires an undisguised representation of our situation. Candor, sir, demands a faithful exposition of facts. Many citizens have found justice strangled and trampled under foot, through the course of jurisprudence in this country. Are those who have debts due to them satisfied with your government? Are not creditors wearied with the tedious procrastination of your legal process — a process obscured by legislative mists? Cast your eyes to your seaports; see how commerce languishes. This country, so blessed, by nature, with every advantage that can render commerce profitable, through defective legislation is deprived of all the benefits and emoluments she might otherwise reap from it. We hear many complaints on the subject of located lands; a variety of competitors claiming the same lands under legislative acts, public faith prostrated, and private confidence destroyed. I ask you if your laws are reverenced. In every well-regulated community, the laws command respect. Are yours entitled to reverence? We not only see violations of the constitution, but of national principles in repeated instances. How is the fact? The history of the violations of the constitution extends from the year 1776 to this present time — violations made by formal acts of the legislature: every thing has been drawn within the legislative vortex.

There is one example of this violation in Virginia, of a most striking and shocking nature — an example so horrid, that, if I conceived my country would passively permit a repetition of it, dear as it is to me, I would seek means of expatriating myself from it. A man, who was then a citizen, was deprived of his life thus: from a mere reliance on general reports, a gentleman in the House of Delegates informed the house, that a certain man (Josiah Philips) had committed several crimes, and was running at large, perpetrating other crimes. He therefore moved for leave to attaint him; he obtained that leave instantly; no sooner did he obtain it, than he drew from his pocket a bill ready written for that effect; it was read three times in one day, and carried to

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the Senate. I will not say that it passed the same day through the Senate; but he was attainted very speedily and precipitately, without any proof better than vague reports. Without being confronted with his accusers and witnesses, without the privilege of calling for evidence in his behalf, he was sentenced to death, and was afterwards actually executed. Was this arbitrary deprivation of life, the dearest gift of God to man, consistent with the genius of a republican government? Is this compatible with the spirit of freedom? This, sir, has made the deepest impression on my heart, and I cannot contemplate it without horror. There are still a multiplicity of complaints of the debility of the laws. Justice, in many instances, is so unattainable that commerce may, in fact, be said to be stopped entirely. There is no peace, sir, in this land. Can peace exist with injustice, licentiousness, insecurity, and oppression? These considerations, independent of many others which I have not yet enumerated, would be a sufficient reason for the adoption of this Constitution, because it secures the liberty of the citizen, his person and property, and will invigorate and restore commerce and industry. An additional reason to induce us to adopt it is that excessive licentiousness which has resulted from the relaxation of our laws, and which will be checked by this government. Let us judge from the fate of more ancient nations: licentiousness has produced tyranny among many of them: it has contributed as much (if not more) as any other cause whatsoever to the loss of their liberties. I have respect for the integrity of our legislatures; I believe them to be virtuous; but as long as the defects of the Constitution exist, so long will laws be imperfect.

The honorable gentleman went on further, and said that the accession of eight states is not a reason for our adoption. Many other things have been alleged out of order; instead of discussing the system regularly, a variety of points are promiscuously debated, in order to make temporary impression on the members. Sir, were I convinced of the validity of their arguments, I would join them heart and hand. Were I convinced that the accession of eight states did not render our accession also necessary to preserve the Union, I would not accede to it till it should be previously amended; but, sir, I am convinced that the Union will be lost by our rejection. Massachusetts has adopted it; she has recommended

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subsequent amendments; her influence must be very considerable to obtain them. I trust my countrymen have sufficient wisdom and virtue to entitle them to equal respect. Is it urged that, being *wiser*, we ought to prescribe amendments to the other states? I have considered this subject deliberately; wearied myself in endeavoring to find a possibility of preserving the Union, without our unconditional ratification; but, sir, in vain; I find no other means. I ask myself a variety of questions applicable to the adopting states, and I conclude, Will they repent of what they have done? Will they acknowledge themselves in an error? Or will they recede, to gratify Virginia? My prediction is, that they will not. Shall we stand by ourselves, and be severed from the Union, if amendments cannot be had? I have every reason for determining within myself that our rejection must dissolve the Union; and that that dissolution will destroy our political happiness. The honorable gentleman was pleased to draw out several other arguments out of order, — that this government would destroy the state governments, the trial by jury, &c. &c., — and concluded by an illustration of his opinion by a reference to the confederacy of the Swiss. Let us argue with unprejudiced minds. They say that the trial by jury is gone. Is this so? Although I have declared my determination to give my vote for it, yet I shall freely censure those parts which appear to me reprehensible.

The trial by jury in criminal cases is secured; in civil cases it is not so expressly secured as I should wish it; but it does not follow that Congress has the power of taking away this privilege, which is secured by the constitution of each state, and not given away by this Constitution. I have no fear on this subject. Congress must regulate it so as to suit every state. I will risk my property on the certainty that they will institute the trial by jury in such manner as shall accommodate the conveniences of the inhabitants in every state. The difficulty of ascertaining this accommodation was the principal cause of its not being provided for. It will be the interest of the individuals composing Congress to put it on this convenient footing. Shall we not choose men respectable for their good qualities? Or can we suppose that men tainted with the worst vices will get into Congress? I beg leave to differ from the honorable gentleman in another

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point. He dreads that great inconveniences will ensue from the federal court; that our citizens will be harassed by being carried thither. I cannot think that this power of the federal judiciary will necessarily be abused; the inconvenience here suggested being of a general nature, affecting most of the states, will, by general consent of the states, be removed; and, I trust, such regulations shall be made in this case as will accommodate the people in every state. The honorable gentleman instanced the Swiss cantons, as an example, to show us the possibility, if not expediency, of being in amicable alliance with the other states, without adopting this system. Sir, references to history will be fatal in political reasons unless well guarded. Our mental ability is often so contracted, and powers of investigation so limited, that sometimes we adduce as an example in our favor what in fact militates against us. Examine the situation of that country comparatively to us: the extent and situation of that country is totally different from ours; their country is surrounded by powerful, ambitious, and reciprocally jealous nations; their territory small, and soil not very fertile. The peculiarity, sir, of their situation, has kept them together, and not that system of alliance to which the gentleman seems to attribute the durability and felicity of their connection.

[Here his excellency quoted some passages from Stanyard, illustrating his argument, and largely commented upon it; the effect of which was, that the narrow confines of that country rendered it very possible for a system of confederacy to accommodate those cantons, that would not suit the United States; that it was the fear of the ambitious and warlike nations that surrounded them, and the reciprocal jealousy of the other European powers, that rendered their union so desirable; and that, notwithstanding these circumstances, and their being a hardy race of people, yet such was the injudicious construction of their confederacy, that very considerable broils interrupted their harmony sometimes.]

His excellency then continued: I have produced this example to show that we ought not to be amused with the historical references which have no kind of analogy to the points under our consideration. We ought to confine ourselves to those points, solely, which have an immediate and strict similitude to the subject of our discussion. The reference made by the honorable gentleman over the way is extremely inapplicable to us. Are the Swiss cantons circumstanced as we are? Are we surrounded by formidable

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nations? Or are we situated in any manner like them? We are not, sir. Then it naturally results, that no such friendly intercourse as he flattered himself with could take place, in a case of a dissolution of our union. We are remotely situated from powerful nations, the dread of whose attack might impel us to unite firmly with one another; nor are we situated in an inaccessibly strong position; we have to fear much from one another. We must soon feel the fatal effects of an imperfect system of union. The honorable gentleman attacks the Constitution, as he thinks it is contrary to our bill of rights. Do we not appeal to the people, by whose authority all government is made? That bill of rights is of no validity, because, I conceive, it is not formed on due authority. It is not a part of our Constitution; it has never secured us against any danger; it has been repeatedly disregarded and violated. But we must not discard the Confederation, for the remembrance of its past services. I am attached to old servants. I have regard and tenderness for this old servant; but when reason tells us, that it can no longer be retained without throwing away all that it has gained us, and running the risk of losing every thing dear to us, must we still continue our attachment? Reason and my duty tell me not. Other gentlemen may think otherwise.

But, sir, is it not possible that men may differ in sentiments, and still be honest? We have an inquisition within ourselves, that leads us not to offend so much against charity. The gentleman expresses a necessity of being suspicious of those who govern. I will agree with him in the necessity of political jealousy to a certain extent; but we ought to examine how far this political jealousy ought to be carried. I confess that a certain degree of it is highly necessary to the preservation of liberty; but it ought not to be extended to a degree which is degrading and humiliating to human nature; to a degree of restlessness, and active disquietude, sufficient to disturb a community, or preclude the possibility of political happiness and contentment. Confidence ought also to be equally limited. Wisdom shrinks from extremes, and fixes on a medium as her choice. Experience and history, the least fallible judges, teach us that, in forming a government, the powers to be given must be commensurate to the object. A less degree will defeat the intention, and a greater will subject the people to the depravity of rulers,

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who, though they are but the agents of the people, pervert their powers to their emoluments and ambitious views.

Mr. Chairman, I am sorry to be obliged to detain the house; but the relation of a variety of matters renders it now unavoidable. I informed the house yesterday, before rising, that I intended to show the necessity of having a national government in preference to the Confederation; also to show the necessity of conceding the power of taxation, and distinguishing between its objects; and I am the more happy that I possess materials of information for that purpose. My intention, then, is to satisfy the gentlemen of this committee that a national government is absolutely indispensable, and that a confederacy is not eligible, in our present situation: the introductory step to this will be, to endeavor to convince the house of the necessity of the Union, and that the present Confederation is actually inadequate and unamendable. The extent of the country is objected, by the gentleman over the way, as an insurmountable obstacle to the establishing a national government in the United States. It is a very strange and inconsistent doctrine, to admit the necessity of the Union, and yet urge this last objection, which I think goes radically to the existence of the Union itself. If the extent of the country be a conclusive argument against a national government, it is equally so against a union with the other states. Instead of entering largely into a discussion of the nature and effect of the different kinds of government, or into an inquiry into the particular extent of country that may suit the genius of this or that government, I ask this question — Is this government necessary for the safety of Virginia? Is the union indispensable for our happiness? I confess it is imprudent for any nation to form alliance with another whose situation and construction of government are dissimilar to its own. It is impolitic and improper for men of opulence to join their interest with men of indigence and chance. But we are now inquiring particularly whether Virginia, as contradistinguished from the other states, can exist without the union — a hard question, perhaps, after what has been said. I will venture, however, to say, she cannot. I shall not rest contented with asserting — I shall endeavor to prove.

Look at the most powerful nations on earth. England and France have had recourse to this expedient. Those

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countries found it necessary to unite with their immediate neighbors, and this union has prevented the most lamentable mischiefs. What divine preëminence is Virginia possessed of above other states? Can Virginia send her navy and thunder to bid defiance to foreign nations? And can she exist without a union with her neighbors, when the most potent nations have found such a union necessary, not only to their political felicity, but their national existence? Let us examine her ability. Although it be impossible to determine with accuracy what degree of internal strength a nation ought to possess to enable it to stand by itself, yet there are certain sure facts and circumstances which demonstrate that a particular nation cannot stand singly. I have spoken with freedom, and I trust I have done it with decency; but I must also speak the truth. If Virginia can exist without the union, she must derive that ability from one or other of these sources, — viz., from her natural situation, or because she has no reason to fear from other nations. What is her situation? She is not inaccessible: she is not a petty republic, like that of St. Marino, surrounded by rocks and mountains, with a soil not very fertile, nor worthy the envy of surrounding nations. Were this, sir, her situation, she might, like that petty state, subsist separated from all the world. On the contrary, she is very accessible: the large, capacious Bay of Chesapeake, which is but too excellently adapted for the admission of enemies, renders her very vulnerable.

I am informed — and I believe rightly, because I derive my information from those whose knowledge is most respectable — that Virginia is in a very unhappy position with respect to the access of foes by sea, though happily situated for commerce. This being her situation by sea, let us look at land. She has frontiers adjoining the states of Pennsylvania, Maryland, and North Carolina. Two of those states have declared themselves members of the Union: will she be inaccessible to the inhabitants of those states? Cast your eyes to the western country, that is inhabited by cruel savages, your natural enemies. Besides their natural propensity to barbarity, they may be excited, by the gold of foreign enemies, to commit the most horrid ravages on your people. Our greatly-increasing population is one remedy to this evil; but being scattered thinly over so extensive a

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country, how difficult is it to collect their strength, or defend the country! This is one point of weakness. I wish, for the honor of my countrymen, that it was the only one. There is another circumstance which renders us more vulnerable. Are we not weakened by the population of those whom we hold in slavery? The day may come when they may make impression upon us. Gentlemen who have been long accustomed to the contemplation of the subject, think there is a cause of alarm in this case: the number of those people, compared to that of the whites, is an immense proportion: their number amounts to 236,000 — that of the whites only to 352,000. Will the American spirit, so much spoken of, repel an invading enemy, or enable you to obtain an advantageous peace? Manufactures and military stores may afford relief to a country exposed: have we these at present? Attempts have been made to have these here. If we shall be separated from the Union, shall our chance of having these be greater? — or will not the want of these be more deplorable?

We shall be told of the exertions of Virginia under the Confederation — her achievements when she had no commerce. These, sir, were necessary for her immediate safety; nor would these have availed without the aid of the other states. Those states, then our friends, brothers, and supporters, will, if disunited from us, be our bitterest enemies. If, then, sir, Virginia, from her situation, is not inaccessible or invulnerable, let us consider if she be protected by having no cause to fear from other nations. Has she no cause to fear? You will have cause to fear, as a nation, if disunited; you will not only have this cause to fear from yourselves, from that species of population I before mentioned, and your once sister states, but from the arms of other nations. Have you no cause of fear from Spain, whose dominions border on your country? Every nation, every people, in our circumstances, have already had abundant cause to fear. Let us see the danger to be apprehended from France. Let us suppose Virginia separated from the other states; as part of the former confederated states, she will owe France a very considerable sum. Will France be as magnanimous as ever? France, by the law of nations, will have a right to demand the whole of her, or of the others. If France were to demand it, what would become of the property of America? Could she not

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destroy what little commerce we have? Could she not seize our ships, and carry havoc and destruction before her on our shores? The most lamentable desolation would take place. We owe a debt to Spain also: do we expect indulgence from that quarter? That nation has a right to demand the debt due to it, and power to enforce that right. Will the Dutch be silent about the debt due to them? Is there any one who pretends that any of these nations will be patient? The debts due the British are also very considerable; these debts have been withheld contrary to treaty: if Great Britain will demand the payment of these debts peremptorily, what will be the consequence? Can we pay them if demanded? Will no danger result from a refusal? Will the British nation suffer their subjects to be stripped of their property? Is not that nation amply able to do her subjects justice? Will the resentment of that powerful and supercilious nation sleep forever? If we become one sole nation, uniting with our sister states, our means of defence will be greater; the indulgence for the payment of those debts will be greater, and the danger of an attack less probable. Moreover, vast quantities of lands have been sold by citizens of this country to Europeans, and these lands cannot be found. Will this fraud be countenanced or endured? Among so many causes of danger, shall we be secure, separated from our sister states? Weakness itself, sir, will invite some attack upon your country. Contemplate our situation deliberately, and consult history; it will inform you that people in our circumstances have ever been attacked, and successfully: open any page, and you will there find our danger truly depicted. If such a people had any thing, was it not taken? The fate which will befall us, I fear, sir, will be, that we shall be made a partition of. How will these our troubles be removed? Can we have any dependence on commerce? Can we make any computation on this subject? Where will our flag appear? So high is the spirit of commercial nations, that they will spend five times the value of the object, to exclude their rivals from a participation in commercial profits; they seldom regard any expenses. If we should be divided from the rest of the states, upon what footing would our navigation in the Mississippi be? What would be the probable conduct of France and Spain? Every gentleman may imagine, in his own mind, the natural consequences. To these considerations I might add many others of a similar nature.

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Were I to say that the boundary between us and North Carolina is not yet settled, I should be told that Virginia and that state go together. But what, sir, will be the consequence of the dispute that may arise between us and Maryland, on the subject of Potomac River? It is thought Virginia has a right to an equal navigation with them in that river. If ever it should be decided on grounds of prior right, their charter will inevitably determine it in their favor. The country called the Northern Neck will probably be severed from Virginia: there is not a doubt but the inhabitants of that part will annex themselves to Maryland, if Virginia refuse to accede to the Union. The recent example of those regulations lately made respecting that territory will illustrate that probability. Virginia will also be in danger of a conflict with Pennsylvania, on the subject of boundaries. I know that some gentlemen are thoroughly persuaded that we have a right to those disputed boundaries: if we have such a right, I know not where it is to be found.

Are we not borderers on states that will be separated from us? Call to mind the history of every part of the world, where nations bordered on one another, and consider the consequences of our separation from the Union. Peruse those histories, and you find such countries to have ever been almost a perpetual scene of bloodshed and slaughter — the inhabitants of one escaping from punishment into the other — protection given them — consequent pursuit — robbery, cruelty, and murder. A numerous standing army, that dangerous expedient, would be necessary, but not sufficient, for the defence of such borders. Every gentleman will amplify the scene in his own mind.

If you wish to know the extent of such a scene, look at the history of England and Scotland before the union; you will see their borderers continually committing depredations, and cruelties of the most calamitous and deplorable nature, on one another. Mr. Chairman, were we struck off from the Union, and disputes of the back lands should be renewed, which are of the most alarming nature, and which must produce uncommon mischiefs, can you inform me how this great subject would be settled? Virginia has a large, unsettled country; she has at last quieted it. But there are great doubts whether she has taken the best way to effect it. If she has not, disagreeable consequences may ensue. I have

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before hinted at some other causes of quarrel between the other states and us; particularly the hatred that would be generated by commercial competitions. I will only add, on that subject, that controversies may arise concerning the fisheries, which may terminate in wars. Paper money may also be an additional source of disputes. Rhode Island has been in one continued train of opposition to national duties and integrity; they have defrauded their creditors by their paper money. Other states have also had emissions of paper money, to the ruin of credit and commerce. May not Virginia, at a future day, also recur to the same expedient? Has Virginia no affection for paper money, or disposition to violate contracts? I fear she is as fond of these measures as most other states in the Union. The inhabitants of the adjacent states would be affected by the depreciation of paper money, which would assuredly produce a dispute with those states. This danger is taken away by the present Constitution, as it provides "that no state shall emit bills of credit." Maryland has counteracted the policy of this state frequently, and may be meditating examples of this kind again. Before the revolution, there was a contest about those back lands, in which even government was a party; it was put an end to by the war. Pennsylvania was ready to enter into a war with us, for the disputed lands near the boundaries, and nothing but the superior prudence of the man who was at the head of affairs in Virginia could have prevented it.

I beg leave to remind you of the strength of Massachusetts and other states to the north; and what would their conduct be to us, if disunited from them? In case of a conflict between us and Maryland, or Pennsylvania, they would be aided by the whole strength of the more northern states; in short, by that of the adopting states. For these reasons, I conceive that, if Virginia supposes she has no cause of apprehension, she will find herself in a fatal error.

Suppose the American spirit in the fullest vigor in Virginia; what military preparations and exertions is she capable of making? The other states have upwards of 330,000 men capable of bearing arms: this will be a good army, or they can very easily raise a good army out of so great a number. Our militia amounts to 50,000: even stretching it to the improbable amount (urged by some) of 60,000,—in case of an attack, what defence can we make? Who are militia? Can

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we depend solely upon these? I will pay the last tribute of gratitude to the militia of my country; they performed some of the most gallant feats during the last war, and acted as nobly as men inured to other avocations could be expected to do; but, sir, it is dangerous to look to them as our sole protectors. Did ever militia defend a country? Those of Pennsylvania were said to differ very little from regulars; yet these, sir, were insufficient for the defence of that state. The militia of our country will be wanted for agriculture. On this noblest of arts depend the virtue and the very existence of a country; if it be neglected, every thing else must be in a state of ruin and decay. It must be neglected if those hands which ought to attend to it are occasionally called forth on military expeditions. Some also will be necessary for manufactures, and those mechanic arts which are necessary for the aid of the farmer and planter. If we had men sufficient in number to defend ourselves, it could not avail without other requisites. We must have a navy, to be supported in time of peace as well as war, to guard our coasts and defend us against invasions. The impossibility of building and equipping a fleet in short time constitutes the necessity of having a certain number of ships of war always ready in time of peace: the maintaining a navy will require money; and where, sir, can we get money for this and other purposes? How shall we raise it? Review the enormity of the debts due by this country. The amount of the debt we owe to the continent for bills of credit, rating at forty for one, will amount to between 6 and 700,000 pounds. There is also due the continent the balance of requisitions due by us; and, in addition to this proportion of the old Continental debt, there are the foreign, domestic, state, military, and loan-office debts; to which when you add the British debt, where is the possibility of finding money to raise an army or navy? Review, then, your real ability. Shall we recur to loans? Nothing can be more impolitic; they impoverish a nation. We, sir, have nothing to repay them; nor, sir, can we procure them. Our numbers are daily increasing by immigration; but this, sir, will not relieve us when our credit is gone and it is impossible to borrow money, If the imposts and duties in Virginia, even on the present footing, be very unproductive, and not equal to our necessity, what would they be if we were sepa-

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rated from the Union? From the first of September to the first of June, the amount put into the treasury is only £59,000, or a little more. But, sir, if smuggling be introduced in consequence of high duties, or otherwise, and the Potomac should be lost, what hope is there of getting money there? Shall we be asked if the impost would be bettered by the Union? I answer that it will, sir. Credit being restored, and confidence diffused in the country, merchants and men of wealth will be induced to come among us, immigration will increase, and commerce will flourish; the impost will therefore be more sure and productive.

Under these circumstances, can you find men to defend you? If not men, where can you have a navy? It is an old observation, that he who commands the sea will command the land; and it is justified by modern experience in war. The sea can only be commanded by commercial nations. The United States have every means, by nature, to enable them to distribute supplies mutually among one another; to supply other nations with many articles, and to carry for other nations. Our commerce would not be kindly received by foreigners, if transacted solely by ourselves. As it is the spirit of commercial nations to engross as much as possible the carrying trade, this makes it necessary to defend our commerce. But how shall we compass this end? England has arisen to the greatest height, in modern times, by her navigation act, and other excellent regulations. The same means would produce the same effects. We have inland navigation. Our last exports did not exceed £1,000,000. Our export trade is entirely in the hands of foreigners. We have no manufactures — depend for supplies on other nations — and so far are we from having any carrying trade, that, as I have already said, our exports are in the hands of foreigners. Besides the profit that might be made by our natural materials, much greater gains would accrue from their being first wrought before they were exported. England has reaped immense profits by this, nay, even by purchasing and working up those materials which their country did not afford: her success in commerce is generally ascribed to her navigation act. Virginia would not, encumbered as she is, agree to have such an act. Thus, for the want of a navy, are we deprived of the multifarious advantages of our natural situation; nor is it possible that,

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if the Union was dissolved, we ever should have a navy sufficient either for our defence or the extension of our trade.

I beg gentlemen to consider these things — our inability to raise and man a navy, and the dreadful consequences of the dissolution of the Union. I will close this catalogue of the evils of the dissolution of the Union by recalling to your mind what passed in the year 1781. Such was the situation of our affairs then, that the power of dictator was given to the commander-in-chief, to save us from destruction. This shows the situation of the country to have been such as to make it ready to embrace an actual dictator. At some future period, will not our distresses impel us to do what the Dutch have done — throw all power into the hands of a stadtholder? How infinitely more wise and eligible than this desperate alternative, is a union with our American brethren! I feel myself so abhorrent to any thing that will dissolve our Union, that I cannot prevail with myself to assent to it directly or indirectly. If the Union is to be dissolved, what step is to be taken? Shall we form a partial confederacy? Or is it expected that we shall successfully apply to foreign alliance for military aid? This last measure, sir, has ruined almost every nation that used it: so dreadful an example ought to be most cautiously avoided; for seldom has a nation recurred to the expedient of foreign succor, without being ultimately crushed by that succor. We may lose our liberty and independence by an injudicious scheme of policy. Admitting it to be a scheme replete with safety, what nation shall we solicit? — France? She will disdain a connection with a people in our predicament. I would trust every thing to the magnanimity of that nation; but she would despise a people who had, like us, so imprudently separated from their brethren; and, sir, were she to accede to our proposal, with what facility could she become mistress of our country! To what nation, then, shall we apply? To Great Britain? Nobody has as yet trusted that idea. An application to any other must be either fruitless or dangerous. To those who advocate local confederacies, and at the same time preach up for republican liberty, I answer that their conduct is inconsistent: the defence of such partial confederacies will require such a degree of force and expense as will destroy every feature of republicanism. Give

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me leave to say, that I see nought but destruction in a local confederacy. With what state can we confederate but North Carolina? — North Carolina, situated worse than ourselves. Consult your own reason; I beseech gentlemen most seriously to reflect on the consequences of such a confederacy; I beseech them to consider whether Virginia and North Carolina, both oppressed with debts and slaves, can defend themselves externally, or make their people happy internally. North Carolina, having no strength but militia, and Virginia, in the same situation, will make, I fear, but a despicable figure in history. Thus, sir, I hope that I have satisfied you that we are unsafe without a union; and that in union alone safety consists.

I come now, sir, to the great inquiry, whether the Confederation be such a government as we ought to continue under — whether it be such a government as can secure the felicity of any free people. Did I believe the Confederation was a good thread, which might be broken without destroying its utility entirely, I might be induced to concur in putting it together; but I am so thoroughly convinced of its incapacity to be mended or spliced, that I would sooner recur to any other expedient.

When I spoke last, I endeavored to express my sentiments concerning that system, and to apologize (if an apology was necessary) for the conduct of its framers; that it was hastily devised to enable us to repel a powerful enemy, that the subject was novel, and that its inefficacy was not discovered till requisitions came to be made by Congress. In the then situation of America, a speedy remedy was necessary to ward off the danger, and this sufficiently answered that purpose; but so universally is its imbecility now known, that it is useless for me to exhibit it at this time. Has not Virginia, as well as every other state, acknowledged its debility, by sending delegates to the general Convention? The Confederation is, of all things, the most unsafe, not only to trust to in its present form, but even to amend.

The object of a federal government is to remedy and strengthen the weakness of its individual branches, whether that weakness arises from situation or from any external cause. With respect to the first, is it not a miracle that the Confederation carried us through the last war? It was our unanimity, sir, that carried us through it. That system

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was not ultimately concluded till the year 1781. Although the greatest exertions were made before that time, when came requisitions for men and money, — its defects then were immediately discovered: the quotas of men were readily sent; not so those of money. One state feigned inability; another would not comply till the rest did; and various excuses were offered: so that no money was sent into the treasury — not a requisition was fully complied with. Loans were the next measure fallen upon: upwards of 80,000,000 of dollars were wanting, beside the emissions of dollars forty for one. These show the impossibility of relying on requisitions.

[Here his excellency enumerates the different delinquencies of different states, and the consequent distresses of Congress.] If the American spirit is to be depended upon, I call him to awake, to see how his Americans have been disgraced; but I have no hopes that things will be better hereafter. I fully expect things will be as they have been, and that the same derangement will produce similar miscarriages. Will the American spirit produce money or credit, unless we alter our system? Are we not in a contemptible situation? Are we not the jests of other nations?

But it is insinuated by the honorable gentleman, that we want to be a grand, splendid, and magnificent people: we wish not to become so: the magnificence of a royal court is not our object. We want a government, sir — a government that will have stability, and give us security; for our present government is destitute of the one and incapable of producing the other. It cannot, perhaps, with propriety, be denominated a government, being void of that energy requisite to enforce sanctions. I wish my country not to be contemptible in the eyes of foreign nations. A well-regulated community is always respected. It is the internal situation, the defects of government, that attract foreign contempt: that contempt, sir, is too often followed by subjugation. Advert to the contemptuous manner in which a shrewd politician speaks of our government.

[Here his excellency quoted a passage from Lord Sheffield, the purport of which was, that Great Britain might engross our trade on her own terms; that the imbecility and inefficacy of our general government were such, that it was impossible we could counteract her policy, however rigid or illiberal towards us her commercial regulations might be.]

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Reflect but a moment on our situation. Does it not invite real hostility? The conduct of the British ministry to us is the natural effect of our unnerved government. Consider the commercial regulations between us and Maryland. Is it not known to gentlemen that the states have been making reprisals on each other — to obviate a repetition of which, in some degree, these regulations have been made? Can we not see, from this circumstance, the jealousy, rivalship, and hatred that would subsist between them, in case this state was out of the Union? They are importing states, and importing states will ever be competitors and rivals. Rhode Island and Connecticut have been on the point of war, on the subject of their paper money; Congress did not attempt to interpose. When Massachusetts was distressed by the late insurrection, Congress could not relieve her. Who headed that insurrection? Recollect the facility with which it was raised, and the very little ability of the ringleader, and you cannot but deplore the extreme debility of our merely nominal government. We are too despicable to be regarded by foreign nations. The defects of the Confederation consisted principally in the want of power: it had nominally powers, powers on paper, which it could not use. The power of making peace and war is expressly delegated to Congress; yet the power of granting passports, though within that of making peace and war, was considered by Virginia as belonging to herself. Without adequate powers vested in Congress, America cannot be respectable in the eyes of other nations. Congress, sir, ought to be fully vested with power to support the Union, protect the interests of the United States, maintain their commerce, and defend them from external invasions and insults, and internal insurrections; to maintain justice, and promote harmony and public tranquillity among the states.

A government not vested with these powers will ever be found unable to make us happy or respectable. How far the Confederation is different from such a government, is known to all America. Instead of being able to cherish and protect the states, it has been unable to defend itself against the encroachments made upon it by the states. Every one of them has conspired against it; Virginia as much as any. This fact could be proved by reference to actual history. I might quote the observations of an able modern author, not

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because he is decorated with the name of author, but because his sentiments are drawn from human nature, to prove the dangerous impolicy of withholding necessary powers from Congress; but I shall at this time fatigue the house as little as possible. What are the powers of Congress? They have full authority to recommend what they please; this recommendatory power reduces them to the condition of poor supplicants. Consider the dignified language of the members of the American Congress. May it please your high mightinesses of Virginia to pay your just proportionate quota of our national debt: we humbly supplicate that it may please you to comply with your federal duties. We implore, we beg your obedience! Is not this, sir, a fair representation of the powers of Congress? Their operations are of no validity when counteracted by the states. Their authority to recommend is a mere mockery of government. But the amendability of the Confederation seems to have great weight on the minds of some gentlemen. To what point will the amendments go? What part makes the most important figure? What part deserves to be retained? In it one body has the legislative, executive, and judicial powers; but the want of efficient powers has prevented the dangers naturally consequent on the union of these. Is this union consistent with an augmentation of their power? Will you, then, amend it by taking away one of these three powers? Suppose, for instance, you only vested it with the legislative and executive powers, without any control on the judiciary; what must be the result? Are we not taught by reason, experience, and governmental history, that tyranny is the natural and certain consequence of uniting these two powers, or the legislative and judicial powers, exclusively, in the same body? If any one denies it, I shall pass by him as an infidel not to be reclaimed. Whenever any two of these three powers are vested in one single body, they must, at one time or other, terminate in the destruction of liberty. In the most important cases, the assent of nine states is necessary to pass a law. This is too great a restriction, and whatever good consequences it may, in some cases, produce, yet it will prevent energy in many other cases. It will prevent energy, which is most necessary on some emergencies, even in cases wherein the existence of the community depends on vigor and expedition. It is incompatible with that secrecy which

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is the life of execution and despatch. Did ever thirty or forty men retain a secret? Without secrecy no government can carry on its operations on great occasions; this is what gives that superiority in action to the government of one. If any thing were wanting to complete this farce, it would be, that a resolution of the Assembly of Virginia, and the other legislatures, should be necessary to confirm and render of any validity the Congressional acts; this would openly discover the debility of the general government to all the world. But, in fact, its imbecility is now nearly the same as if such acts were formally requisite. An act of the Assembly of Virginia, controverting a resolution of Congress, would certainly prevail. I therefore conclude that the Confederation is too defective to deserve correction. Let us take farewell of it, with reverential respect, as an old benefactor. It is gone, whether this house says so or not. It is gone, sir, by its own weakness.

I am afraid I have tired the patience of this house; but I trust you will pardon me, as I was urged by the importunity of the gentleman in calling for the reasons of laying the groundwork of this plan. It is objected by the honorable gentleman over the way (Mr. George Mason) that a republican government is impracticable in an extensive territory, and the extent of the United States is urged as a reason for the rejection of this Constitution. Let us consider the definition of a republican government, as laid down by a man who is highly esteemed. Montesquieu, so celebrated among politicians, says, that "a republican government is that in which the body, or only a part, of the people is possessed of the supreme power; a monarchical, that in which a single person governs by fixed and established laws; a despotic government, that in which a single person, without law and without rule, directs every thing by his own will and caprice." This author has not distinguished a republican government from a monarchy by the extent of its boundaries, but by the nature of its principles. He, in another place, contradistinguishes it as a government of laws, in opposition to others which he denominates a government of men.

The empire or government of laws, according to that phrase, is that in which the laws are made with the free-will of the people; hence, then, if laws be made by the assent of the people, the government may be deemed free. When

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laws are made with integrity, and executed with wisdom, the question is, whether a great extent of country will tend to abridge the liberty of the people. If defensive force be necessary in proportion to the extent of country, I conceive that, in a judiciously-constructed government, be the country ever so extensive, its inhabitants will be proportionably numerous, and able to defend it. Extent of country, in my conception, ought to be no bar to the adoption of a good government. No extent on earth seems to be too great, provided the laws be wisely made and executed. The principles of representation and responsibility may pervade a large as well as small territory; and tyranny is as easily introduced into a small as into a large district. If it be answered, that some of the most illustrious and distinguished authors are of a contrary opinion, I reply, that authority has no weight with me till I am convinced; that not the dignity of names, but the force of reasoning, gains my assent.

I intended to show the nature of the powers which ought to have been given to the general government, and the reason of investing it with the power of taxation; but this would require more time than my strength, or the patience of the committee, would now admit of. I shall conclude with a few observations, which come from my heart. I have labored for the continuance of the Union — the rock of our salvation. I believe that, as sure as there is a God in heaven, our safety, our political happiness and existence, depend on the union of the states; and that without this union, the people of this and the other states will undergo the unspeakable calamities which discord, faction, turbulence, war, and bloodshed, have produced in other countries. The American spirit ought to be mixed with American pride, to see the Union magnificently triumphant. Let that glorious pride, which once defied the British thunder, reanimate you again. Let it not be recorded of Americans, that, after having performed the most gallant exploits, after having overcome the most astonishing difficulties, and after having gained the admiration of the world by their incomparable valor and policy, they lost their acquired reputation, their national consequence and happiness, by their own indiscretion. Let no future historian inform posterity that they wanted wisdom

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and virtue to concur in any regular, efficient government. Should any writer, doomed to so disagreeable a task, feel the indignation of an honest historian, he would reprehend and criminate our folly with equal severity and justice. Catch the present moment — seize it with avidity and eagerness — for it may be lost, never to be regained! If the Union be now lost, I fear it will remain so forever. I believe gentlemen are sincere in their opposition, and actuated by pure motives; but, when I maturely weigh the advantages of the Union, and dreadful consequences of its dissolution; when I see safety on my right, and destruction on my left; when I behold respectability and happiness acquired by the one, but annihilated by the other, — I cannot hesitate to decide in favor of the former. I hope my weakness, from speaking so long, will apologize for my leaving this subject in so mutilated a condition. If a further explanation be desired, I shall take the liberty to enter into it more fully another time.

Mr. MADISON then arose — [but he spoke so low that his exordium could not be heard distinctly.] I shall not attempt to make impressions by any ardent professions of zeal for the public welfare. We know the principles of every man will, and ought to be, judged, not by his professions and declarations, but by his conduct; by that criterion I mean, in common with every other member, to be judged; and should it prove unfavorable to my reputation, yet it is a criterion from which I will by no means depart. Comparisons have been made between the friends of this Constitution and those who oppose it: although I disapprove of such comparisons, I trust that, in point of truth, honor, candor, and rectitude of motives, the friends of this system, here and in other states, are not inferior to its opponents. But professions of attachment to the public good, and comparisons of parties, ought not to govern or influence us now. We ought, sir, to examine the Constitution on its own merits solely: we are to inquire whether it will promote the public happiness: its aptitude to produce this desirable object ought to be the exclusive subject of our present researches. In this pursuit, we ought not to address our arguments to the feelings and passions, but to those understandings and judgments which were selected by the people of this country, to

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decide this great question by a calm and rational investigation. I hope that gentlemen, in displaying their abilities on this occasion, instead of giving opinions and making assertions, will condescend to prove and demonstrate, by a fair and regular discussion. It gives me pain to hear gentlemen continually distorting the natural construction of language; for it is sufficient if any human production can stand a fair discussion. Before I proceed to make some additions to the reasons which have been adduced by my honorable friend over the way, I must take the liberty to make some observations on what was said by another gentleman, (Mr. Henry.) He told us that this Constitution ought to be rejected because it endangered the public liberty, in his opinion, in many instances. Give me leave to make one answer to that observation: Let the dangers which this system is supposed to be replete with be clearly pointed out: if any dangerous and unnecessary powers be given to the general legislature, let them be plainly demonstrated; and let us not rest satisfied with general assertions of danger, without examination. If powers be necessary, apparent danger is not a sufficient reason against conceding them. He has suggested that licentiousness has seldom produced the loss of liberty; but that the tyranny of rulers has almost always effected it. Since the general civilization of mankind, I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power, than by violent and sudden usurpations; but, on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions, which, in republics, have, more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the sources of that diversity of sentiment which pervades its inhabitants, we shall find great danger to fear that the same causes may terminate here in the same fatal effects which they produced in those republics. This danger ought to be wisely guarded against. Perhaps, in the progress of this discussion, it will appear that the only possible remedy for those evils, and

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means of preserving and protecting the principles of republicanism, will be found in that very system which is now exclaimed against as the parent of oppression.

I must confess I have not been able to find his usual consistency in the gentleman's argument on this occasion. He informs us that the people of the country are at perfect repose, — that is, every man enjoys the fruits of his labor peaceably and securely, and that every thing is in perfect tranquillity and safety. I wish sincerely, sir, this were true. If this be their happy situation, why has every state acknowledged the contrary? Why were deputies from all the states sent to the general Convention? Why have complaints of national and individual distresses been echoed and reechoed throughout the continent? Why has our general government been so shamefully disgraced, and our Constitution violated? Wherefore have laws been made to authorize a change, and wherefore are we now assembled here? A federal government is formed for the protection of its individual members. Ours has attacked itself with impunity. Its authority has been disobeyed and despised. I think I perceive a glaring inconsistency in another of his arguments. He complains of this Constitution, because it requires the consent of at least three fourths of the states to introduce amendments which shall be necessary for the happiness of the people. The assent of so many he urges as too great an obstacle to the admission of salutary amendments, which, he strongly insists, ought to be at the will of a bare majority. We hear this argument, at the very moment we are called upon to assign reasons for proposing a constitution which puts it in the power of nine states to abolish the present inadequate, unsafe, and pernicious Confederation! In the first case, he asserts that a majority ought to have the power of altering the government, when found to be inadequate to the security of public happiness. In the last case, he affirms that even three fourths of the community have not a right to alter a government which experience has proved to be subversive of national felicity! nay, that the most necessary and urgent alterations cannot be made without the absolute unanimity of all the states! Does not the thirteenth article of the Confederation expressly require that no alteration shall be made without the unanimous consent of all the states? Could any thing in theory be more perniciously improvident and injudicious than this submission of

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the will of the majority to the most trifling minority? Have not experience and practice actually manifested this theoretical inconvenience to be extremely impolitic? Let me mention one fact, which I conceive must carry conviction to the mind of any one: the smallest state in the Union has obstructed every attempt to reform the government; that little member has repeatedly disobeyed and counteracted the general authority; nay, has even supplied the enemies of its country with provisions. Twelve states had agreed to certain improvements which were proposed, being thought absolutely necessary to preserve the existence of the general government; but as these improvements, though really indispensable, could not, by the Confederation, be introduced into it without the consent of every state, the refractory dissent of that little state prevented their adoption. The inconveniences resulting from this requisition, of unanimous concurrence in alterations in the Confederation, must be known to every member in this Convention; it is therefore needless to remind them of them. Is it not self-evident that a trifling minority ought not to bind the majority? Would not foreign influence be exerted with facility over a small minority? Would the honorable gentleman agree to continue the most radical defects in the old system, because the petty state of Rhode Island would not agree to remove them?

He next objects to the exclusive legislation over the district where the seat of government may be fixed. Would he submit that the representatives of this state should carry on their deliberations under the control of any other member of the Union? If any state had the power of legislation over the place where Congress should fix the general government, this would impair the dignity, and hazard the safety, of Congress. If the safety of the Union were under the control of any particular state, would not foreign corruption probably prevail, in such a state, to induce it to exert its controlling influence over the members of the general government? Gentlemen cannot have forgotten the disgraceful insult which Congress received some years ago. When we also reflect that the previous cession of particular states is necessary before Congress can legislate exclusively any where, we must, instead of being alarmed at this part, heartily approve of it.

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But the honorable member sees great danger in the provision concerning the militia. This I conceive to be an additional security to our liberty, without diminishing the power of the states in any considerable degree. It appears to me so highly expedient that I should imagine it would have found advocates even in the warmest friends of the present system. The authority of training the militia, and appointing the officers, is reserved to the states. Congress ought to have the power to establish a uniform discipline throughout the states, and to provide for the execution of the laws, suppress insurrections, and repel invasions: these are the only cases wherein they can interfere with the militia; and the obvious necessity of their having power over them in these cases must convince any reflecting mind. Without uniformity of discipline, military bodies would be incapable of action: without a general controlling power to call forth the strength of the Union to repel invasions, the country might be overrun and conquered by foreign enemies: without such a power to suppress insurrections, our liberties might be destroyed by domestic faction, and domestic tyranny be established.

The honorable member then told us that there was no instance of power once transferred being voluntarily renounced. Not to produce European examples, which may probably be done before the rising of this Convention, have we not seen already, in seven states, (and probably in an eighth state,) legislatures surrendering some of the most important powers they possessed? But, sir, by this government, powers are not given to any particular set of men; they are in the hands of the people; delegated to their representatives chosen for short terms; to representatives responsible to the people, and whose situation is perfectly similar to their own. As long as this is the case we have no danger to apprehend. When the gentleman called our recollection to the usual effects of the concession of powers, and imputed the loss of liberty generally to open tyranny, I wish he had gone on farther. Upon his review of history, he would have found that the loss of liberty very often resulted from factions and divisions; from local considerations, which eternally lead to quarrels; he would have found internal dissensions to have more frequently demolished civil liberty, than a tenacious disposition in rulers to retain any stipulated powers.

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[Here Mr. Madison enumerated the various means whereby nations had lost their liberties.]

The power of raising and supporting armies is exclaimed against as dangerous and unnecessary. I wish there were no necessity of vesting this power in the general government. But suppose a foreign nation to declare war against the United States; must not the general legislature have the power of defending the United States? Ought it to be known to foreign nations that the general government of the United States of America has no power to raise and support an army, even in the utmost danger, when attacked by external enemies? Would not their knowledge of such a circumstance stimulate them to fall upon us? If, sir, Congress be not invested with this power, any powerful nation, prompted by ambition or avarice, will be invited, by our weakness, to attack us; and such an attack, by disciplined veterans, would certainly be attended with success, when only opposed by irregular, undisciplined militia. Whoever considers the peculiar situation of this country, the multiplicity of its excellent inlets and harbors, and the uncommon facility of attacking it, — however much he may regret the necessity of such a power, cannot hesitate a moment in granting it. One fact may elucidate this argument. In the course of the late war, when the weak parts of the Union were exposed, and many states were in the most deplorable situation by the enemy's ravages, the assistance of foreign nations was thought so urgently necessary for our protection, that the relinquishment of territorial advantages was not deemed too great a sacrifice for the acquisition of one ally. This expedient was admitted with great reluctance, even by those states who expected advantages from it. The crisis, however, at length arrived, when it was judged necessary for the salvation of this country to make certain cessions to Spain; whether wisely or otherwise is not for me to say; but the fact was, that instructions were sent to our representative at the court of Spain, to empower him to enter into negotiations for that purpose. How it terminated is well known. This fact shows the extremities to which nations will go in cases of imminent danger, and demonstrates the necessity of making ourselves more respectable. The necessity of making dangerous cessions, and of applying to foreign aid, ought to be excluded.

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The honorable member then told us that there are heart-burnings in the adopting states, and that Virginia may, if she does not come into the measure, continue in amicable confederacy with the adopting states. I wish as seldom as possible to contradict the assertions of gentlemen; but I can venture to affirm, without danger of being in an error, that there is the most satisfactory evidence that the satisfaction of those states is increasing every day, and that, in that state where it was adopted only by a majority of nineteen, there is not one fifth of the people dissatisfied. There are some reasons which induce us to conclude that the grounds of proselytism extend every where; its principles begin to be better understood; and the inflammatory violence wherewith it was opposed by designing, illiberal, and unthinking minds, begins to subside. I will not enumerate the causes from which, in my conception, the heart-burnings of a majority of its opposers have originated. Suffice it to say, that in all they were founded on a misconception of its nature and tendency. Had it been candidly examined and fairly discussed, I believe, sir, that but a very inconsiderable minority of the people of the United States would have opposed it. With respect to the Swiss, whom the honorable gentleman has proposed for our example, as far as historical authority may be relied on, we shall find their government quite unworthy of our imitation. I am sure, if the honorable gentleman had adverted to their history and government, he never would have quoted their example here; he would have found that, instead of respecting the rights of mankind, their government (at least of several of their cantons) is one of the vilest aristocracies that ever was instituted: the peasants of some of their cantons are more oppressed and degraded than the subjects of any monarch in Europe; nay, almost as much so as those of any Eastern despot. It is a novelty in politics, that from the worst of systems the happiest consequences should ensue. Their aristocratical rigor, and the peculiarity of their situation, have so long supported their union: without the closest alliance and amity, dismemberment might follow; their powerful and ambitious neighbors would immediately avail themselves of their least jarrings. As we are not circumstanced like them, no conclusive precedent can be drawn from their situation. I trust the gentleman does not carry his idea so far as to recommend a separation from the

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adopting states. This government may secure our happiness; this is at least as probable as that it shall be oppressive. If eight states have, from a persuasion of its policy and utility, adopted it, shall Virginia shrink from it, without a full conviction of its danger and inutility? I hope she will never shrink from any duty: I trust she will not determine without the most serious reflection and deliberation.

I confess to you, sir, were uniformity of religion to be introduced by this system, it would, in my opinion, be ineligible; but I have no reason to conclude that uniformity of government will produce that of religion. This subject is, for the honor of America, perfectly free and unshackled. The government has no jurisdiction over it: the least reflection will convince us there is no danger to be feared on this ground.

But we are flattered with the probability of obtaining previous amendments. This calls for the most serious attention of this house. If amendments are to be proposed by one state, other states have the same right, and will also propose alterations. These cannot but be dissimilar, and opposite in their nature. I beg leave to remark, that the governments of the different states are in many respects dissimilar in their structure; their legislative bodies are not similar; their executive are more different. In several of the states, the first magistrate is elected by the people at large; in others, by joint ballot of the members of both branches of the legislature; and in others, in other different manners. This dissimilarity has occasioned a diversity of opinion on the theory of government, which will, without many reciprocal concessions, render a concurrence impossible. Although the appointment of an executive magistrate has not been thought destructive to the principles of democracy in many of the states, yet, in the course of the debate, we find objections made to the federal executive: it is urged that the President will degenerate into a tyrant. I intended, in compliance with the call of the honorable member, to explain the reasons of proposing this Constitution, and develop its principles; but I shall postpone my remarks till we hear the supplement which, he has informed us, he intends to add to what he has already said.

Give me leave to say something of the nature of the government, and to show that it is safe and just to vest it with the power of taxation. There are a number of opinions; but the

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principal question is, whether it be a federal or consolidated government. In order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is a government of a federal nature; in others, it is of a consolidated nature. Even if we attend to the manner in which the Constitution is investigated, ratified, and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal. Who are parties to it? The people — but not the people as composing one great body; but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment; and, as a majority have adopted it already, the remaining states would be bound by the act of the majority, even if they unanimously reprobated it. Were it such a government as is suggested, it would be now binding on the people of this state, without having had the privilege of deliberating upon it. But, sir, no state is bound by it, as it is, without its own consent. Should all the states adopt it, it will be then a government established by the thirteen states of America, not through the intervention of the legislatures, but by the people at large. In this particular respect, the distinction between the existing and proposed governments is very material. The existing system has been derived from the dependent derivative authority of the legislatures of the states; whereas this is derived from the superior power of the people. If we look at the manner in which alterations are to be made in it, the same idea is, in some degree, attended to. By the new system, a majority of the states cannot introduce amendments; nor are all the states required for that purpose; three fourths of them must concur in alterations; in this there is a departure from the federal idea. The members to the national House of Representatives are to be chosen by the people at large, in proportion to the numbers in the respective districts. When we come to the Senate, its members are elected by the states in their equal and political capacity. But had the government been completely con-

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solidated, the Senate would have been chosen by the people in their individual capacity, in the same manner as the members of the other house. Thus it is of a complicated nature; and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well as of a mere confederacy. If Virginia was separated from all the states, her power and authority would extend to all cases: in like manner, were all powers vested in the general government, it would be a consolidated government; but the powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction.

But the honorable member has satirized, with peculiar acrimony, the powers given to the general government by this Constitution. I conceive that the first question on this subject is, whether these powers be necessary; if they be, we are reduced to the dilemma of either submitting to the inconvenience or losing the Union. Let us consider the most important of these reprobated powers; that of direct taxation is most generally objected to. With respect to the exigencies of government, there is no question but the most easy mode of providing for them will be adopted. When, therefore, direct taxes are not necessary, they will not be recurred to. It can be of little advantage to those in power to raise money in a manner oppressive to the people. To consult the conveniences of the people will cost them nothing, and in many respects will be advantageous to them. Direct taxes will only be recurred to for great purposes. What has brought on other nations those immense debts, under the pressure of which many of them labor? Not the expenses of their governments, but war. If this country should be engaged in war, — and I conceive we ought to provide for the possibility of such a case, — how would it be carried on? By the usual means provided from year to year? As our imports will be necessary for the expenses of government and other common exigencies, how are we to carry on the means of defence? How is it possible a war could be supported without money or credit? And would it be possible for a government to have credit without having the power of raising money? No; it would be impossible for any government, in such a case, to defend itself. Then, I say, sir, that it is necessary to establish funds for extraordinary

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exigencies, and to give this power to the general government; for the utter inutility of previous requisitions on the states is too well known. Would it be possible for those countries, whose finances and revenues are carried to the highest perfection, to carry on the operations of government on great emergencies, such as the maintenance of a war, without an uncontrolled power of raising money? Has it not been necessary for Great Britain, notwithstanding the facility of the collection of her taxes, to have recourse very often to this and other extraordinary methods of procuring money? Would not her public credit have been ruined, if it was known that her power to raise money was limited? Has not France been obliged, on great occasions, to use unusual means to raise funds? It has been the case in many countries, and no government can exist unless its powers extend to make provisions for every contingency. If we were actually attacked by a powerful nation, and our general government had not the power of raising money, but depended solely on requisitions, our condition would be truly deplorable: if the revenue of this commonwealth were to depend on twenty distinct authorities, it would be impossible for it to carry on its operations. This must be obvious to every member here; I think, therefore, that it is necessary, for the preservation of the Union, that this power shall be given to the general government.

But it is urged that its consolidated nature, joined to the power of direct taxation, will give it a tendency to destroy all subordinate authority; that its increasing influence will speedily enable it to absorb the state governments. I cannot think this will be the case. If the general government were wholly independent of the governments of the particular states, then, indeed, usurpation might be expected to the fullest extent. But, sir, on whom does this general government depend? It derives its authority from these governments, and from the same sources from which their authority is derived. The members of the federal government are taken from the same men from whom those of the state legislatures are taken. If we consider the mode in which the federal representatives will be chosen, we shall be convinced that the general will never destroy the individual governments; and this conviction must be strengthened by an attention to the construction of the Senate. The repre-

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sentatives will be chosen probably under the influence of the members of the state legislatures; but there is not the least probability that the election of the latter will be influenced by the former. One hundred and sixty members represent this commonwealth in one branch of the legislature, are drawn from the people at large, and must ever possess more influence than the few men who will be elected to the general legislature.

The reasons offered on this subject, by a gentleman on the same side, (Mr. Nicholas,) were unanswerable, and have been so full that I shall add but little more on the subject. Those who wish to become federal representatives must depend on their credit with that class of men who will be the most popular in their counties, who generally represent the people in the state governments; they can, therefore, never succeed in any measure contrary to the wishes of those on whom they depend. It is almost certain, therefore, that the deliberations of the members of the federal House of Representatives will be directed to the interest of the people of America. As to the other branch, the senators will be appointed by the legislatures; and, though elected for six years, I do not conceive they will so soon forget the source from whence they derive their political existence. This election of one branch of the federal by the state legislatures, secures an absolute dependence of the former on the latter. The biennial exclusion of one third will lessen the facility of a combination, and may put a stop to intrigues. I appeal to our past experience, whether they will attend to the interests of their constituent states. Have not those gentlemen, who have been honored with seats in Congress, *often signalized themselves by their attachment to their seats?* I wish this government may answer the expectation of its friends, and foil the apprehension of its enemies. I hope the patriotism of the people will continue, and be a sufficient guard to their liberties. I believe its tendency will be, that the state governments will counteract the general interest, and ultimately prevail. The number of the representatives is yet sufficient for our safety, and will gradually increase; and, if we consider their different sources of information, the number will not appear too small.

Mr. NICHOLAS. Mr. Chairman, if the resolution taken by the house of going regularly through the system, clause

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by clause, had been followed, I should confine myself to one particular paragraph; but as, to my surprise, the debates have taken a different turn, I shall endeavor to go through the principal parts of the argument made use of by the gentlemen in opposition to the proposed plan of government. The worthy gentleman entertained us very largely on the impropriety and dangers of the powers given by this plan to the general government; but his argument appears to me inconclusive and inaccurate; it amounts to this — that the powers given to any government ought to be small. I believe this, sir, is a new idea in politics: — powers, being given for some certain purpose, ought to be proportionate to that purpose, or else the end for which they are delegated will not be answered. It is necessary to give powers, to a certain extent, to any government. If a due medium be not observed in the delegation of such powers, one of two things must happen: if they be too small, the government must moulder and decay away; if too extensive, the people must be oppressed. As there can be no liberty without government, it must be as dangerous to make powers too limited as too great. He tells us that the Constitution annihilates the Confederation. Did he not prove that every people had a right to change their government when it should be deemed inadequate to their happiness? The Confederation being found utterly defective, will he deny our right to alter or abolish it? But he objects to the expression, "We, the people," and demands the reason why they had not said, "We, the United States of America." In my opinion, the expression is highly proper: it is submitted to the people, because on them it is to operate: till adopted, it is but a dead letter, and not binding on any one; when adopted, it becomes binding on the people who adopt it. It is proper on another account. We are under great obligations to the federal Convention, for recurring to the people, the source of all power. The gentleman's argument militates against himself: he says that persons in power never relinquish their powers willingly. If, then, the state legislatures would not relinquish part of the powers they now possess, to enable a general government to support the Union, reference to the people is necessary.

We are, in the next place, frightened by two sets of collectors, who, he tells us, will oppress us with impunity.

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The amount of the sums to be raised of the people is the same, whether the state legislatures lay the taxes for themselves, or for the general government; whether each of them lays and collects taxes for its own exclusive purposes: the manner of raising it only is different. So far as the amount of the imposts may exceed that of the present collections, so much will the burdens of the people be less. Money cannot be raised in a more judicious manner than by imposts; it is not felt by the people; it is a mode which is practised by many nations: nine tenths of the revenues of Great Britain and France are raised by indirect taxes; and were they raised by direct taxes, they would be exceedingly oppressive. At present, the reverse of this proposition holds in this country; for very little is raised by indirect taxes.

The public treasuries are supplied by means of direct taxes, which are not so easy for the people. But the people will be benefited by this change. Suppose the imposts will only operate a reduction of one fifth of the public burdens; then, sir, out of every ten shillings we have now to pay, we shall only have to pay eight shillings: and suppose this to be apportioned so that we pay four shillings to the federal and four shillings to the state collector, — what inconvenience or oppression can arise from it? Would this be as oppressive as the payment of ten shillings to the state collector? Our constituents do not suspect our delegates to the state legislature, but we suspect the members of the future Congress.

But, sir, they tell us this power of direct taxation ought not to be intrusted to the general government, because its members cannot be acquainted with the local situation of the people. Where do the members of the state legislatures get their information? It is by their own experience, and intercourse with the people. Cannot those of the general government derive information from every source from which the state representatives get theirs, so as to enable them to impose taxes judiciously? We have the best security we can wish for: if they impose taxes on the people which are oppressive, they subject themselves and their friends to the same inconvenience, and to the certainty of never being confided in again. And what will be the consequence of laying taxes on improper objects? Will the funds be increased by it? By no means. I may venture to say, the amount of the taxes will diminish in proportion to the diffi-

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culty and impropriety of the mode of levying them. What advantage, then, would it be to the members of Congress to render the collection of taxes oppressive to the people? They would be certainly out of their senses to oppress the people without any prospect of emolument to themselves.

But another objection is made, which I never heard of before. The gentleman has told us that the number of representatives may be reduced to one for every state. Is this a just surmise, even supposing it to be only said, that the number should not exceed one for every thirty thousand? Had it stopped there, any state, by his doctrine, might have no representative at all. Is it possible that this interpretation could ever be thought of? for the worthy gentleman allowed it was not a natural construction. But the Constitution says that representation and taxation shall be in proportion to the number of the people, and that each state shall have at least one representative. What will be the consequence of this? Each state must pay its proportion of taxes; and its representation is to be equal to its taxes. I ask gentlemen if this be not a safe mode of representation. The gentleman then told us the representatives would never wish their number to be increased. But, sir, the increase of their number will increase their importance. How will it affect their interest in elections? The greater their number, the greater their chance of reëlection. It is a natural supposition that every one of them will have the greatest interest with the people in that part of his district where he resides; the more their number, the more districts will there be, and the greater certainty of their being reëlected, as it will be easier for them to have influence in small than in large districts. But this power of direct taxes is not to be got over; the gentleman will try every thing in alternative. What will be the consequence of these alternatives? It will lead Congress to have a contest with particular states. After refusal and opposition, what is to be done? Must force be used for the purpose? How is it to be procured? It would, in a little time, expend more money than the sum which it was intended to procure; and the fatal consequences of such a scheme, provided it were practicable, are self-evident. I am astonished that gentlemen should wish to put it on this footing; for the consequences would assuredly be, in the first place, a disappointment to Congress. Would this previous

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alternative diminish or retrench the powers of Congress, if ultimately they are to have recourse to this power? One thing will be the certain consequence: Congress, in making requisitions, must reckon on a disappointment, and will therefore increase them according to the expected disappointment: by these means, the burdens of the people must be enlarged. He then wonders that gentlemen could come to so sudden a resolution of adopting it. As to the time, it will require as much to reject as to adopt it; and if a deliberate discussion be the most rational mode of proceeding, a precipitate rejection will, at least, be as imprudent as a sudden adoption. He declares that he would, in despite of an erring world, reject it, and wishes this state to continue in opposition. Were our country separated by nature from the other states, we might be safe without the Union; but as we are bordered on the adopting states, security can be found in union only. Consider the consequences of disunion: attend to the situation of those citizens who are contiguous to Maryland; look at the country called the Northern Neck; if we reject the Constitution, will not its inhabitants shake off their dependence on us? But, sir, the worthy member has declared, as a reason for not changing our government, that no terrors had been experienced, that no insurrections had happened, among us. It was indeed a wonder that this was the case, considering the relaxation of the laws. Tumults have happened in other states. Had they been attempted here by an enterprising adventurer, I believe he could hardly have been prevented by the laws; for I believe every citizen in this country has complained of their want of energy. The worthy member has exclaimed, with uncommon vehemence, against the mode provided for securing amendments. He thinks amendments can never be obtained, because so great a number is required to concur. Had it rested solely with Congress, there might have been danger. The committee will see that there is another mode provided, besides that which originates with Congress. On the application of the legislatures of two thirds of the several states, a convention is to be called to propose amendments, which shall be a part of the Constitution when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof. It is natural to conclude that those states who will apply for calling the con-

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vention will concur in the ratification of the proposed amendments.

There are strong and cogent reasons operating on my mind, that the amendments, which shall be agreed to by those states, will be sooner ratified by the rest than any other that can be proposed. The conventions which shall be so called will have their deliberations confined to a few points; no local interest to divert their attention; nothing but the necessary alterations. They will have many advantages over the last Convention. No experiments to devise; the general and fundamental regulations being already laid down.

He makes another objection — that, contrary to the articles of our bill of rights, we may be taxed without our own consent; that taxes may be imposed, although every member from Virginia should oppose the measure. The argument is not accurate. A tax imposed on the people of this state, by our legislature, may be opposed by the members from the county of Albemarle, without being repugnant to our bill of rights; because Albemarle is represented, and the act of the majority is binding on the minority. In like manner, our privilege of representation in the federal government will prevent any of the general laws from being unconstitutional although contrary to the individual opinions of our representatives.

But it is complained that they may suspend our laws. The suspension of the writ of *habeas corpus* is only to take place in cases of rebellion or invasion. This is necessary in those cases; in every other case, Congress is restrained from suspending it. In no other case can they suspend our laws; and this is a most estimable security. But the influence of New England and the other Northern States is dreaded; there are apprehensions of their combining against us. Not to advert to the improbability and illiberality of this idea, it must be supposed that our population will, in a short period, exceed theirs, as their country is well settled, and we have very extensive uncultivated tracts. We shall soon outnumber them in as great a degree as they do us at this time: therefore this government, which, I trust, will last to the remotest ages, will be very shortly in our favor. Treason consists in levying war against the United States, or in adhering to their enemies, giving them aid and comfort.

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The punishment of this well-defined crime is to be declared by Congress; no oppression, therefore, can arise on this ground. This security does away the objection that the most grievous oppressions might happen under color of punishing crimes against the general government. The limitation of the forfeiture to the life of the criminal is also an additional privilege.

We are next told that there is wanting in this government that responsibility which has been the salvation of Great Britain, although one half of the House of Commons purchase their seats. It has been already shown that we have much greater security from our federal representatives than the people in England can boast. But the worthy member has found out a way of solving our difficulties. He tells us that we have nothing to fear, if separated from the adopting states; but to send on our money and men to Congress. In that case, can we receive the benefits of the union? If we furnish money at all, it will be our proportionate share. The consequence will be, that we shall pay our share, without the privilege of being represented. So that, to avoid the inconvenience of not having a sufficient number of representatives, he would advise us to relinquish the number we are entitled to, and have none at all. I believe, sir, there is a great and decided majority of the people in favor of the system; it is so in that part of the country wherein I reside. It is true, sir, that many of the people have declared against a government, which, they were told, destroyed the trial by jury; against a government, sir, which established a standing army; against a government which abridged the liberty of the press; against a government which would tax all their property from them; against a government which infringed the rights of conscience; and against a government, sir, which should banish them to France, to be common soldiers, and which would eventually destroy all their rights and privileges. This, sir, is the government of which they have given their disapprobation. Still, sir, a majority have considered this government in a different light, and have given their approbation of it. I believe, sir, that, on a fair and candid investigation, very few would oppose it. Those who think that the evils I have enumerated will result from it, exceed me in point of credulity.

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SATURDAY, *June* 7, 1788.

[The first and second sections still under consideration.]

Mr. CORBIN. Mr. Chairman, permit me to make a few observations on this great question. It is with great difficulty I prevail on myself to enter into the debate, when I consider the great abilities of those gentlemen who have already spoken on the subject. But as I am urged by my duty to my constituents, and as I conceive that the different manner of treating the subject may make different impressions, I shall offer my observations with diffident respect, but with firmness and independence. I will promise my acknowledgments to those honorable gentlemen who were in the federal Convention, for the able and satisfactory manner in which they discharged their duty to their country. The introductory expression of "We, the people," has been thought improper by the honorable gentleman. I expected no such objection as this. Ought not the people, sir, to judge of that government whereby they are to be ruled? We are, sir, deliberating on a question of great consequence to the people of America, and to the world in general. We ought, therefore, to decide with extreme caution and circumspection: it is incumbent upon us to proceed without prejudice or prepossession. No member of the committee entertains a greater regard than myself for the gentleman on the other side, who has placed himself in the front of opposition, (Mr. Henry.) No man admires more than I do his declamatory talents; but I trust that neither declamation nor elegance of periods will mislead the judgment of any member here, and that nothing but the force of reasoning will operate conviction. He has asked, with an air of triumph, whether the Confederation was not adequate to the purposes of the federal government: permit me to say, No. If, sir, perfection existed in that system, why was the federal Convention called? Why did every state except Rhode Island send deputies to that Convention?

Was it not from a persuasion of its inefficacy? If this be not sufficient to convince him, let me call the recollection of the honorable gentleman to other circumstances. Let him go into the interior parts of the country, and inquire into the situation of the farmers. He will be told that tobacco, and other produce, are miserably low, merchandise dear, and taxes high. Let him go through the United States. He

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will perceive appearances of ruin and decay every where. Let him visit the sea-coast — go to our ports and inlets. In those ports, sir, where we had every reason to see the fleets of all nations, he will behold but a few trifling little boats; he will every where see commerce languish; the disconsolate merchant, with his arms folded, ruminating, in despair, on the wretched ruins of his fortune, and deploring the impossibility of retrieving it. The West Indies are blocked up against us. Not the British only, but other nations, exclude us from those islands; our fur trade gone to Canada; British sentinels within our own territories; our posts withheld. To these distresses we may add the derangement of our finances: yet the honorable gentleman tells us they are not sufficient to justify so radical a change. Does he know the consequences of deranged finances? What confusions, disorders, and even revolutions, have resulted from this cause, in many nations! Look at France at this time: that kingdom is almost convulsed; ministers of state, and first princes of the blood, banished; manufacturers and merchants become bankrupt, and the people discontented; all owing to the derangement of their finances.

The honorable gentleman must be well acquainted with the debts due by the United States, and how much is due to foreign nations. Has not the payment of these been shamefully withheld? How long, sir, shall we be able, by fair promises, to satisfy these creditors? How long can we amuse, by idle words, those who are amply possessed of the means of doing themselves justice? No part of the principal is paid to those nations; nor has even the interest been paid as honorably and punctually as it ought. Nay, we were obliged to borrow money last year to pay the interest. What! borrow money to discharge the interest of what was borrowed, and continually augment the amount of the public debt! Such a plan would destroy the richest country on earth. What is to be done? Compel the delinquent states to pay requisitions to Congress? How are they to be compelled? By the instrumentality of such a scheme as was proposed to be introduced in the year 1784? * Is this cruel mode of compulsion eligible? Is it consistent with the

* Alluding to a motion made in the House of Delegates, in the year 1784, to enable Congress to compel the delinquent states to pay their respective quotas, by means of an armed force.

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spirit of republicanism? This savage mode, which could be made use of under the Confederation, leads directly to civil war and destruction. How different is this from the genius of the proposed Constitution! By this proposed plan, the public money is to be collected by mild and gentle means; by a peaceable and friendly application to the individuals of the community: whereas, by the other scheme, the public treasury must be supplied through the medium of the sword, by desolation and murder — by the blood of the citizens. Yet we are told that there is too much energy in this system. Coercion is necessary in every government. Justice, sir, cannot be done without it. It is more necessary in federal governments than any other, because of the natural imbecility of such governments.

The honorable gentleman is possessed of much historical knowledge. I appeal to that knowledge therefore. Will he not agree that there was a coercive power in the federal government of the Amphictyonics? The coercive power of the Amphictyonic council was so great as to enable it to punish disobedience and refractory behavior in the most severe manner. Is there not an instance of its carrying fire and sword through the territories, and levelling to the ground the towns, of those who disobeyed it? [Here Mr. Corbin mentions particular instances.] Is there no coercion in the Germanic body? This body, though composed of three hundred different component sovereignties, principalities, and cities, and divided into nine circles, is controlled by one superintending power, the emperor. Is there no coercive power in the confederate government of the Swiss? In the alliance between them and France, there is a provision whereby the latter is to interpose and settle differences that may arise among them; and this interposition has been more than once used. Is there none in Holland? What is the stadtholder? This power is necessary in all governments; a superintending coercive power is absolutely indispensable. This does not exist under the present Articles of Confederation. To vest it with such a power, on its present construction, without any alteration, would be extremely dangerous, and might lead to civil war. Gentlemen must, before this, have been convinced of the necessity of an alteration. Our state vessel has sprung a leak; we must embark in a new bottom, or sink into perdition.

The honorable gentleman has objected to the Constitu-

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tion, on the old worn-out idea that a republican government is best calculated for a small territory. If a republic, sir cannot be accommodated to an extensive country, let me ask, How small must a country be to suit the genius of republicanism? In what particular extent of country can a republican government exist? If contracted into as small a compass as you please, it must labor under many disadvantages. Too small an extent will render a republic weak, vulnerable, and contemptible. Liberty, in such a petty state, must be on a precarious footing; its existence must depend on the philanthropy and good nature of its neighbors. Too large an extent, it is said, will produce confusion and tyranny. What has been so often deprecated will be removed by this plan. The extent of the United States cannot render this government oppressive. The powers of the general government are only of a general nature, and their object is to protect, defend, and strengthen the United States; but the internal administration of government is left to the state legislatures, who exclusively retain such powers as will give the states the advantages of small republics, without the danger commonly attendant on the weakness of such governments.

There are controversies even about the name of this government. It is denominated by some a federal, by others a consolidated government. The definition given of it by my honorable friend (Mr. Madison) is, in my opinion, accurate. Let me, however, call it by another name — a representative federal republic, as contradistinguished from a confederacy. The former is more wisely constructed than the latter; it places the remedy in the hands which *feel* the disorder: the other places the remedy in those hands which *cause* the disorder. The evils that are most complained of in such governments (and with justice) are faction, dissension, and consequent subjection of the minority to the caprice and arbitrary decisions of the majority, who, instead of consulting the interest of the whole community collectively, attend sometimes to partial and local advantages. To avoid this evil is perhaps the great *desideratum* of republican wisdom; it may be termed the philosopher's stone. Yet, sir, this evil will be avoided by this Constitution: faction will be removed by the system now under consideration, because all the causes which are generally pro-

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ductive of faction are removed. This evil does not take its flight entirely; for were jealousies and divisions entirely at an end, it might produce such lethargy as would ultimately terminate in the destruction of liberty, to the preservation of which, watchfulness is absolutely necessary. It is transferred from the state legislatures to Congress, where it will be more easily controlled. Faction will decrease in proportion to the diminution of counsellors. It is much easier to control it in small than in large bodies. Our state legislature consists of upwards of one hundred and sixty, which is a greater number than Congress will consist of at first. Will not more concord and unanimity exist in one than in thirteen such bodies? Faction will more probably decrease, or be entirely removed, if the interest of a nation be entirely concentrated, than if entirely diversified. If thirteen men agree, there will be no faction. Yet if opposite, and of heterogeneous dispositions, it is impossible that a majority of such clashing minds can ever concur to oppress the minority. It is impossible that this government, which will make us one people, will have a tendency to assimilate our situations, and is admirably calculated to produce harmony and unanimity, can ever admit of an oppressive combination by one part of the Union against the other.

A confederate government is, of all others, best calculated for an extensive country. Its component individual governments are, of all others, best calculated for an extensive country. Its component individual governments administer and afford all the local conveniences that the most compact governments can do; and the strength and energy of the confederacy may be equal to those of any government. A government of this kind may extend to all the western world; nay, I may say, *ad infinitum*. But it is needless to dwell any longer on this subject; for the objection that an extensive territory is repugnant to a republican government applies against this and every state in the Union, except Delaware and Rhode Island. Were the objection well founded, a republican government could exist in none of the states, except those two. Such an argument goes to the dissolution of the Union, and its absurdity is demonstrated by our own experience.

But an objection is urged against this government because of its power of laying direct taxes. Let me ask the honor

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able gentleman who opposes it on this ground, if he reflects whether this power be indispensable or not. Sir, if it be not vested with the power of commanding all the resources of the state when necessary, it will be trifling. Wars are as much (and more) carried on by the length of the purse, as by that of the sword. They cannot be carried on without money. Unless this power be given to Congress, foreign nations may crush you. The concession of this power is necessary to do Virginia justice, by compelling the delinquent states to pay as well as she: while she paid her quotas, and her citizens were much distressed to pay their taxes, other states most shamefully neglected or refused to pay their proportions. I trust gentlemen need not be alarmed on the subject of taxation, nor intimidated by the idea of double collectors, who, they tell us, will oppress and ruin the people. From our attention to our situation, we shall see that this mode of levying money, though indispensably necessary on great emergencies, will be but seldom recurred to. Let us attend to the finances of this country.

Mr. CORBIN then stated the probable annual amount of duties on imported articles throughout the continent, including West India produce, which, he said, from the best calculation he could procure, would exceed the annual expenses of the administration of the general government, including the civil list, contingent charges, and the interest of the foreign and domestic debts, by eighty or ninety thousand pounds; that, he said, would enable the United States to discharge, in a few years, the principal debts due to foreign nations; that, in the course of thirty years, that surplus would enable the United States to perform the most splendid enterprises. He then concluded that no danger was to be apprehended from the power of direct taxation, since there was every reason to believe it would be very seldom used. He then made an estimate of the state debt, and clearly proved that, with economical regulations, all the demands of the internal administration of government would be paid with facility and ease from the different resources of the state; and that there would also be a considerable surplus, which, with prudence and economy, might answer many valuable purposes.

Mr. Corbin then continued as follows: The honorable gentleman declared in the most solemn manner, that, if he could see one single trait in that government to secure lib-

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erty, he would not object to it. I meet him on this ground. Liberty is secured, sir, by the limitation of its powers, which are clearly and unequivocally defined, and which are to be exercised by our own representatives freely chosen. What power is given that will endanger liberty? I consider all the traits of this system as having a tendency to the security of our liberty. I consider all its powers necessary, and only given to avoid greater evils; and if this conclusion of mine be well founded, let me ask if public liberty is not secured by bars and adamantine bolts — secured by the strongest guards and checks which human ingenuity can invent. Will this dread power of taxation render liberty insecure? Sir, without this power, other powers will answer no purpose. Government cannot exist without the means of procuring money. My honorable friend told us he considered this clause as the vitals of the Constitution. I will change the phrase, and say that I consider this part as the lungs of the Constitution. If it be sick, the whole system is consumptive, and must soon decay; and this power can never be dangerous if the principles of equal and free representation be fully attended to. While the right of suffrage is secured, we have little to fear. This government, sir, fully secures us this noble privilege, on the purest and simplest principles of equality That number which, in any one part of the country, has a right to send a representative, has the same right in another part. What does the Constitution say? That thirty thousand shall have one representative, no matter where. If this be not equal representation, what, in the name of God, is equal representation? But, says the honorable gentleman, the Constitution may be satisfied by one from each state. I conceive there is no fear of this. There is not a power to diminish the number. Does it not say that representatives shall be apportioned according to the number of the people, and that direct taxes shall be regulated by the same rules? Virginia, in the first instance, will have ten times as many as Delaware, and afterwards in proportion to their numbers. What is the criterion of representation? Do the people wish land only to be represented? They have their wish: for the qualifications which the laws of the states require to entitle a man to vote for a state representative are the qualifications required by this plan to vote for a representative to Congress; and in this state, and most of the others, the

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possession of a freehold is necessary to entitle a man to the privilege of a vote. Do they wish persons to be represented? Here also they are indulged; for the number of representatives is determined by the number of people: this idea is so well attended to, that even three fifths of those who are not free are included among those of whom thirty thousand shall have a right to elect one representative; so that, in either point of view, their wish is gratified. Is not liberty secured on this foundation? If it be not secured by one or the other mode, or by both, I am totally without reason. Liberty seems intrenched on this ground.

But the gentleman objects that the number is not sufficient. My opinion, with deference to that gentleman, and others who may be of different opinion from me, is, that it is fully sufficient. Being delegated solely for general purposes, a few intelligent men will suffice; at least one for every thirty thousand, aided by the Senate, seems sufficient. Are combinations, or factions, so often formed in small as in numerous bodies? Are laws better made in large than in small assemblies? Is not the influence of popular declaimers less in small than in great bodies? Would not a more numerous representation be very expensive? Is economy of no consideration? We ought, sir, to attend to the situation of the people; and our measures should be as economical as possible, without extending, however, our parsimony to a dangerous length. Objections should be founded on just and real grounds, and ought not to be urged out of a mere obstinacy. Besides, it is by no means certain that a very numerous body is more independent, or upright, than a small one. Why should the number of our representatives be greater, Mr. Chairman? The county of Middlesex, in England, which includes the cities of London and Westminster, contains upwards of nine hundred and ninety thousand souls, and yet sends to Parliament no more than eight members. Among all the clamors of the people there, it never entered into the brain of any of them that these eight were not enough. They complain that the boroughs of Old Sarum, Newton, and Gatton, and other such places, should send each two members to Parliament, although without houses or inhabitants, while the richest city sends but four. They also complain of the influence of the landed interest in some cases; that the county of Cornwall sends forty members to Parlia-

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ment, although it pays but eighteen parts, out of five hundred and thirteen, to the subsidy and land tax, when the county of Middlesex, which is calculated to pay two hundred and fifty parts out of five hundred and thirteen, sends but eight members. In that country, it has been uniformly found that those members, who are chosen by numerous respectable electors, make the greatest opposition to oppression and corruption, and signalize themselves for the preservation of liberty. The collective body of the commons there have generally exerted themselves in the defence of freedom, and have been successful in their exertions, notwithstanding the inequality of their election. Our representatives are chosen in the fairest manner; their election is founded in absolute equality. Is the American spirit so degenerated, notwithstanding these advantages, that the love of liberty is more predominant and warm in the breast of a Briton than in that of an American? When liberty is on a more solid foundation here than in Britain, will Americans be less ready to maintain and defend it than Britons? No, sir; the spirit of liberty and independence of the people of this country, at present, is such that they could not be enslaved under any government that could be described. What danger is there, then, to be apprehended from a government which is theoretically perfect, and the possible blemishes of which can only be demonstrated by actual experience?

The honorable gentleman then urges an objection respecting the militia, who, he tells us, will be made the instruments of tyranny to deprive us of our liberty. Your militia, says he, will fight against you. Who are the militia? Are we not militia? Shall we fight against ourselves? No, sir; the idea is absurd. We are also terrified by the dread of a standing army. It cannot be denied that we ought to have the means of defence, and be able to repel an attack.

If some of the community are exclusively inured to its defence, and the rest attend to agriculture, the consequence will be, that the arts of war and defence, and of cultivating the soil, will be understood. Agriculture will flourish, and military discipline will be perfect. If, on the contrary, our defence be solely intrusted to militia, ignorance of arms and negligence of farming will ensue: the former plan is, in every respect, more to the interest of the state. By it we shall have good farmers and soldiers; by the latter we shall have

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neither. If the inhabitants be called out on sudden emergencies of war, their crops, the means of their subsistence, may be destroyed by it. If we are called in the time of sowing seed, or of harvest, the means of subsistence might be lost; and the loss of one year's crop might have been prevented by a trivial expense, if appropriated to the purpose of supporting a part of the community, exclusively occupied in the defence of the whole. I conceive that this idea, if it be a new one, is yet founded on solid and very substantial reasons. But, sir, we are told of the expediency and propriety of previous amendments. What end would it answer to attempt it? Will the states which have adopted the Constitution rescind their adopting resolutions? Had we adopted it, would we recede from it to please the caprice of any other state? Pride, sir, revolts at the idea. Admitting this state proposes amendments previous to her adoption, must there not be another federal convention? Must there not be also a convention in each state? Suppose some of our proposed conditions to be rejected; will not our exclusion out of the Union be the consequence? Or would other conventions again be called, and would be eternally revolving and devising expedients, without coming to a final decision? The loss of the union, sir, must be the result of a pertinacious demand of precedent conditions. My idea is, that we should go hand in hand with Massachusetts: adopt it first, and then propose amendments of a general nature; for local ones cannot be expected. Consider the situation of Massachusetts, commanding the north, and the importance and respectability of Virginia to the south. These, sir, are the two most populous, wealthy, and powerful states in the Union. Is it not very probable that their influence would have very great weight in carrying any amendments? Would any gentleman turn a deaf ear to their solicitations? By union alone can we exist: by no other means can we be happy. Union must be the object of every gentleman here. I never yet have heard any gentleman so wild and frantic in his opposition as to avow an attachment to partial confederacies. By previous adoption, the union will be preserved; by insisting on alterations previous to our adoption, the union may be lost, and our political happiness destroyed by internal dissensions. I trust, therefore, that this Convention, after deliberate discussion, will not hesitate to determine on a previous rati-

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fication of a system which, even in its present form, seems competent to the perpetual preservation of our security and happiness.

Mr. HENRY then arose, and expressed a desire that the honorable gentleman on the other side (Gov. Randolph) should continue his observations on the subject he had left unfinished the day before; that he had before, and would now, give him a patient hearing, as he wished to be informed of every thing that gentlemen could urge in defence of that system which appeared to him so defective.

Gov. RANDOLPH. Mr. Chairman, as the gentleman who was last up has given us an opportunity of continuing our observations, I shall, in resuming the subject, endeavor to put this question in a more correct and accurate point of view than it has yet been put in.

I took the liberty, yesterday, of declaring to the house the necessity of a national rather than a federal government, and that the union was necessary for Virginia for many powerful reasons; that this necessity arose from the certainty of her being involved in disputes and war with the adjoining states, and the probability of an attack by foreign nations, particularly by those nations to which she is greatly in debt, and which she is unable to pay; from her inability to raise an army to protect her citizens from internal seditions and external attacks, and her inability to raise a navy to protect her trade and her coasts against descents and invasions. I also, in the course of my argument on this occasion, showed the imbecility of the present system, in order to obviate and detect the sophistry of that truly delusive opinion, which has taken possession of the minds of some gentlemen, that this shipwrecked vessel is sufficiently strong and safe for us to embark in. Whether I have succeeded or not, I have given the full effusions of my soul, in my attempt to prove the futility of that opinion. Permit me now to pursue the object of my inquiry respecting the powers necessary to be given to the general government. I shall discard general considerations at present, as I wish to be as brief as possible, and take up the particular idea of direct taxation. Is it necessary that the legislative power of the United States should be authorized to levy taxes? A strange question to be agitated in this house, after hearing the delinquency of other states, and even of

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Virginia herself! Money is the nerve — the life and soul of a government. It is the utmost folly to say that a government could be carried on without this great agent of human affairs. Wars cannot be carried on without a full and uncontrolled discretionary power to raise money in an eligible manner. Nay, sir, government cannot be administered in time of peace without this power. For how is it to be done? It is needless to impress any further on the minds of the gentlemen who hear me the necessity of this power in governments. If so, ought the general government to be more circumscribed in the power of providing for its own safety and existence than any other government? Ought it to depend for the means of its preservation on other bodies? This is actually the case with the Confederation. The power of raising money was nominally vested in that system. In March, 1781, even Maryland, the most backward state then, conceded that Congress should have the power of receiving and demanding their proportionate quotas of the states. This was an acknowledgment of the necessity of vesting a power in Congress to raise such sums as emergencies might require; but the means which were proposed have been found inadequate to compass the end: the propriety of the means is alone disputed. No doubt it is the universal opinion of the people of this commonwealth, that its legislature should have the power of raising money at its own will and pleasure. There are two ways whereby this may be effected — by requisitions, or taxation: there is no other manner; for it surpasses the ingenuity of man to devise any other mode of raising money than by one of these two methods. If the alternative of requisitions be determined upon, as more eligible, it will not avail without coercion. If that of taxation be preferred, it will be sufficient without any coercion. If our legislature were to depend on requisitions for money to answer the ends of government, then, sir, the absurdity and sophistry of the arguments urged in defence of such a mode of procuring money would strike the weakest intellect. If the mere pleasure of individuals were alone to be consulted, if it were left to the choice of your people to pay or not, your treasury would be much poorer than it is; and the advocates of this pernicious policy would perhaps be ashamed of their pertinacity. Suppose, for a moment, the only ex-

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isting mode of raising a revenue in Virginia to be that of requisitions; suppose your requisitions sent on to every county; say that money is wanted; assume the most pressing language — "We earnestly entreat you; we humbly supplicate and solicit you would furnish us with one thousand or one hundred pounds, to defray the necessary charges of our government!" What would be the result of such applications for voluntary contributions? You would be laughed at for your folly, for thinking human nature could be thus operated upon. From my knowledge of human nature, and of my countrymen, I am perfectly certain this would be the case. The argument will be found good in all cases; it will admit of any extension. I ask any gentleman in this house, if states would comply with what even a few individuals would refuse? Would not the requisitions of Congress meet a similar fate? This, sir, has as often happened as it has been the pleasure of the states to withhold the quotas. Not a shilling has been put into the Continental treasury but with the utmost reluctance. The probable delinquency of other states has been the pretext of non-compliance, with every state. It has been thought hard that our General Assembly should pay when Congress ordered us. Our representatives have been supposed careless of our interest in paying the demands of Congress, while delinquencies happened in other states. Punctuality, sir, instead of being held in that estimation which it really merits, has been looked upon as an improvident expenditure of the substance of the people, and a subjection of the inhabitants to grievances and burdens to which the people of delinquent states were not exposed. This idea has been held in many states, and would hold again. Whosoever depends on the mere right to demand their respective proportions of the states, shows a total ignorance of human actions, and betrays an unacquaintance with the principles of sure policy. The principal ends of all political institutions are the happiness and safety of the community; but a reliance on congressional requisitions would leave the country exposed and open to those who should choose to invade us, or lead to such sedition and confusion among ourselves as must subvert and destroy every object of human society. If requisitions be not faithfully complied with, military coercion seems necessary: coercion, judiciously and moderately

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used, is proper; but, if severely and cruelly inflicted, begets unconquerable aversion and hatred. If the spirit of resentment actuates individuals, will not states be equally vindictive? What species of military coercion could the general government adopt for the enforcement of obedience to its demands? Either an army sent into the heart of a delinquent state, or blocking up its ports. Have we lived to this, then, that, in order to suppress and exclude tyranny, it is necessary to render the most affectionate friends the most bitter enemies? — set the father against the son, and make the brother slay the brother? Is this the happy expedient that is to preserve liberty? Will it not destroy it? If an army be once introduced to force us, if once marched into Virginia, figure to yourself what the dreadful consequence will be: the most lamentable civil war must ensue. Have we any troops but militia to confront those disciplined bands that would be sent to force our compliance with requisitions? The most virulent railings are vented against the federal executive. We are told that the President can fix himself in the chair of state, establish himself as a monarch, and destroy the liberties of the people.

It has too often happened that powers delegated for the purpose of promoting the happiness of a community have been perverted to the advancement of the personal emoluments of the agents of the people; but the powers of the President are too well guarded and checked to warrant this illiberal aspersion. Let us candidly consider the consequences of the favorite plan of requisitions, and see whether, instead of imaginary or problematical, there be not real, palpable dangers. To compel your obedience, a rapacious army will penetrate into the bosom of your country, carrying destruction and desolation before it. The commander of such an army will be liable to the corruptions and passions incident to other men. If he be possessed of military genius, address, and ambition, he may procure this army to proclaim him king. Who can tell the result? Who can oppose him with success? Who can say to him, Sir, you shall not be a despot! The reasoning, however inconclusive or illogical it may appear to some, is, in my estimation, more accurate than arguments drawn from the possibility of a President's becoming a tyrant.

Mr. Chairman, I should object to the so-much-admired al-

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ternative of gentlemen, were there no other reason than the danger of an army to enforce requisitions, and the danger of its general becoming our master. I will not mention those nations that might be applied to for aid in such a case: it could easily be procured, but the remedy would be worse than the disease. I speak with respect to Virginia alone. Suppose our trade was to be taken into the hands of Congress; they would find little to satisfy their demands. If permitted by other nations, the compensation they could derive from the exclusive control of our trade would be but trivial. Great Britain, France, and Holland, are intimately concerned to carry on trade with us: those nations would disapprove of the measure; and such evasions would be practised on such an occasion as would render it totally ineffectual. If Congress were then to block up our ports, or send an army into our country, Virginia would be in such a horrid situation as would induce her to call for the aid of foreign nations: they have their eyes fixed on us; they watch every opportunity to avail themselves of our divisions. It is their interest we should be weak and divided. Any of them would readily engage in our dissensions; none of them would be displeased at our distractions. But what would be their object in assisting us? On what principles have auxiliaries ever been sent to the aid of a country? Show me an instance (except the conduct of France to America) where auxiliaries have not either attempted or actually made themselves masters of those they assisted. With respect to France, her magnanimity to America is almost unprecedented. She has displayed a degree of disinterestedness and generosity not often exemplified in the annals of mankind. Till France joined us, our troops were not able to withstand the enemy. Yet the fate of many other nations ought to convince us that the assistance of foreigners is the most dangerous and the last experiment that ought to be recurred to. Yet the predilection for retaining the power of direct taxation is not to be overcome.

An expedient, proposed by a gentleman whom I do not now see in the house, (Mr. George Mason,) is, that this power shall be only given to the general government as an alternative after requisitions shall have been refused. The most positive requisitions will be unavailable, and failure will produce war. A formal refusal, or negligent non-compli-

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ance with the demands of Congress, under a knowledge of the existence of this execrated alternative, would be a prelude to active opposition. I consider this expedient very little better than the ineffectual mode of simple requisitions. The only difference is, that it gives a little more time to a refractory state to provide itself with arms and foreign alliance, to enable it to oppose the operation of this alternative, and resist federal collectors, as was observed by the honorable gentleman in the chair. The proper time will be picked for the commencement of opposition, and for putting the bayonet to the breasts of their fellow-citizens. Suppose a requisition to be made on Virginia for two hundred thousand pounds: she fails to comply: taxes are then to be collected in the common manner. Is it not probable that the aversion to the exercise of this power by the general government will incite discontented minds to oppose it? Then, sir, the dogs of war are to be let loose, and inconceivable mischief to ensue. If the inability of the people requires an extension of the time of payment, let them be indulged as far as may be consistent with a regard for the public exigencies; but let us not be so infatuated as to choose an expedient which must either be inadequate to the destined purpose, or eventuate in bloodshed and war. Requisitions, sir, however modified, must come within this description; they strike me with horror and disgust. I would as soon see a separation from the Union, and trust to the genius, patriotism, vigilance, and activity — to the morals and natural uprightness — of the people, as ask a government with no other powers than those whereof our present system is possessed. This is an improvement on that system; and if we reject it, we are ruined.

Our credit is depressed and irretrievably gone, without a change of that system which has caused its depression. It is humiliating and disgraceful to recur to loans, situated as we are. It is ruinous on any condition on which our credit could be competent to obtain them; though, under a regular, judicious system of administration, they may be very salutary and beneficial. If some accounts be believed, your ambassador has received from the king of France those stipends which have supported him. Is this honorable? Is it safe for America? Safety, sir, forbids so dishonorable and despicable a conduct as to leave our representatives in a state of absolute dependence on another power. Will not this situation be

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freely and forcibly represented to him?—"Remember, sir, the bread you eat to-morrow depends on the bounty of the Count de Vergennes!" Is it possible that, in our present circumstances, we can inspire any one with confidence in our engagements? Where, in the hour of distress and calamity, shall Congress be able to borrow money? The present revenues are appropriated to different purposes, and are, from the incompetency of requisitions, inadequate to the public exigencies. Admitting the impost will be sufficiently productive to enable Congress to discharge its engagements, and answer all the demands of government, in case of a war, will not necessity and the fear of danger render it necessary for the general government to divert the revenues, from the usual appropriations, to the defence of the Union? The necessity of such a diversion does not lessen the certainty that the public credit would be destroyed by it. The interest on the public debt could not be paid; foreign and domestic creditors would be disappointed and irritated; and the displeasure of the former might lead to the most serious consequences. What could the general government do, in such a situation, without the power of providing money by taxation? Requisitions would be fruitless and ineffectual; nor could a government, which depended on such a slender and inefficient force, meet with credulity enough any where to trust it. Will you expose the Continental Congress to such a critical distress? Do you consult public liberty by reducing it to an extremity, whereof none can with certainty foretell the dangerous consequences? Is it not laying a train by which liberty is to be blown up? By withholding a necessary power, you may unwarily lay the foundation of usurpation itself.

I conclude with my firm belief, that I show my friendship for Virginia more steadfastly by discarding these requisitions, than by any proposition I could suggest.

The benefits arising from loans are innumerable. Every nation, even the most wealthy and the oldest nations, have found it necessary to recur to loans in time of war. This country has found it so even in time of peace; but on a supposition of war, we *must* borrow money. It will be inevitable. How can Congress have credit to borrow any sum to a considerable amount, on any reasonable conditions, unless it have full scope and complete command over the resources of

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the Union? Whatever may be the visionary and fanciful conclusions of political skeptics, the credit of a nation will be found to be coëxtensive with its ability. If Congress have an uncontrolled power to raise money as contingencies may render it necessary, it can borrow with ease; but if it have not this power, it is not possible that any confidence can be put in it.

The difficulty of justly apportioning the taxes among the states, under the present system, has been complained of; the rule of apportionment being the value of all lands and improvements within the states. The inequality between the rich lands of James River and the barrens of Massachusetts has been thought to militate against Virginia. If taxes could be laid according to the real value, no inconvenience could follow; but, from a variety of reasons, this value was very difficult to be ascertained; and an error in the estimation must necessarily have been oppressive to a part of the community. But in this new Constitution, there is a more just and equitable rule fixed — a limitation beyond which they cannot go. Representatives and taxes go hand in hand: according to the one will the other be regulated. The number of representatives is determined by the number of inhabitants; they have nothing to do but to lay taxes accordingly. I will illustrate it by a familiar example. At present, before the population is actually numbered, the number of representatives is sixty-five. Of this number, Virginia has a right to send ten; consequently she will have to pay ten parts out of sixty-five parts of any sum that may be necessary to be raised by Congress. This, sir, is the line. Can Congress go beyond the bounds prescribed in the Constitution? Has Congress a power to say that she shall pay fifteen parts out of sixty-five parts? Were they to assume such a power, it would be a usurpation so glaring, that rebellion would be the immediate consequence. Congress is only to say on what subject the tax is to be laid. It is a matter of very little consequence how it will be imposed, since it must be clearly laid on the most productive article in each particular state. I am surprised that such strong objections should have been made to, and such fears and alarms excited by, this power of direct taxation, since experience shows daily that it is neither inconvenient nor oppressive. A collector goes to a man's house; the man pays him with freedom, or makes ar-

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apology for his inability to do it then: at a future day, if payment be not made, distress is made, and acquiesced in by the party. What difference is there between this and a tax imposed by Congress? Is it not done by lawful authority? The distinction is between a Virginian and Continental authority. Yet, in both cases, it is imposed by ourselves, through the medium of our representatives. When a tax will come to be laid by Congress, the collector will apply in like manner, and in the same manner receive payment, or an apology; at a future day, likewise, the same consequences will result from a failure. I presume, sir, there is a manifest similarity between the two cases. When gentlemen complain of the novelty, they ought to advert to the singular one that must be the consequence of the requisitions — an army sent into your country to force you to comply. Will not this be the dissolution of the Union, if ever it takes effect? Let us be candid on this subject: let us see if the criterion here fixed be not equal and just. Were the tax laid on one uniform article through the Union, its operation would be oppressive on a considerable part of the people. When any sum is necessary for the general government, every state will immediately know its exact proportion of it, from the number of their people and representatives; nor can it be doubted that the tax will be laid on each state, in the manner that will best accommodate the people of such state, as thereby it will be raised with more facility; for an oppressive mode can never be so productive as the most easy for the people.

The system under consideration is objected to in an unconnected and irregular manner: detached parts are attacked without considering the whole: this, sir, is disingenuous and unreasonable. Ask if the powers be unnecessary. If the end proposed can be obtained by any other means, the powers may be unnecessary. Infallibility was not arrogated by the Convention: they included in the system those powers they thought necessary. If you do not think the ceding those powers indispensable, never give them up. But, I trust, this power of imposing direct taxes has been proved to be essential to the very existence of the Union. The advocates for the national government, circumstanced as they are, with the accession of so many states, never will give their assent to leave it in the power of the states

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to sacrifice the Union. It has been observed, by an honorable gentleman over the way, (Mr. George Mason,) that there could not be a fellow-feeling between the national representatives and their constituents, and that oppression must be inseparable from their exercise of the power of imposing taxes. I beg leave to remind you of a similar complaint made on a similar occasion. I allude to the Scotch union. If gentlemen cast their eyes to that period, they will find there an instructive similitude between our circumstances and the situation of those people. The advocates for a union with England declared that it would be a foundation of lasting peace, remove all jealousies between them, increase their strength and riches, and enable them to resist more effectually the efforts of the Pretender. These were irresistible arguments, one would be inclined to believe; arguments *a priori*, which challenge conviction, and which appear perfectly conclusive, since now verified by actual events. Yet the opposers of that union declaimed that the independence of Scotland was gone; that the peerage of Scotland was degraded; that the people of England would alone be gainers; and that the people of Scotland would be the losers. How are the facts? Both kingdoms have derived great benefits from that union, and the predictions of the advocates for that union have been fully verified. The arguments used on that occasion apply with more cogency to our situation.

The people of Rhode Island may say their independence will be lost by a union with the other states; that they will be degraded, their consequence lost, and their liberties endangered. Many such specious and plausible arguments may be urged by their great men, who would no longer retain the importance which their paper money, and other causes, give them in a single state; yet the topographical situation of that state renders union more essential to its existence than to that of any other state. It is urged that the independence of Virginia will be gone by the union. Will not all the happy effects of the union I have just mentioned, and more, redound to Virginia from this union? But our representatives are suspected. On a further inspection of the system before you, this objection must vanish. Ten representatives will have no fellow-feeling for their constituents! Will not the people choose men of integrity, and in similar

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circumstances with themselves, to represent them? What laws can they make that will not operate on themselves and friends, as well as on the rest of the people? Will the people reëlect the same men to repeat oppressive legislation? Will the people commit suicide against themselves, and discard all those maxims and principles of interest and self-preservation which actuate mankind in all their transactions? Will the ten miles square transform our representatives into brutes and tyrants? I see no grounds to distrust them: but suppose they will be inclined to do us mischief; how can they effect it? If the federal necessities call for the sum of sixty-five thousand pounds, our proportion of that sum is ten thousand pounds. If, instead of this just proportion, they should require a greater sum, a conflict would ensue. What steps could they take to enforce the payment of the unjust and tyrannical demand? They must summon up all the genius of better men; but in case of actual violence, they could not raise the thousandth part of ten thousand pounds. In case of a struggle, sir, the people would be irresistible. If they should be so liable to lapse from virtue, yet would not one man be found, out of a multitude, to guard the interests of the people — not one man to hold up his head to discover the tyrannical projects of a corrupt and depraved majority?

Suppose the House of Representatives all equally infatuated, and determined on so wicked an intention as to infringe the rights of the people; they have not the whole authority in their own hands. There are twenty-six senators, distinguished for their wisdom, not elevated by popular favor, but chosen by a select body of intelligent men: will they also be corrupt? Will their honor and virtue be contaminated and disgraced in one instant? Sixty-five representatives and twenty-six senators are then to be suddenly changed from upright men to monsters: ninety-one persons, selected for superior qualities, are to compose this Pandemonium of iniquity. The supposition of their degenerating to such a degree is unwarrantable, and inconsistent with an admission of their being freely chosen by a people capable of discerning merit; and should a majority ever be so forgetful of their duty as to wish to trample on the immunities of the people, there is no reason to doubt that some of them will be so far inspired with a zeal for liberty as to warn their country of

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any dangerous combinations against their privileges. The people, to heighten their security, may send those to the general government who have been signalized for their wisdom and virtue. What security have the people of Virginia against the possible abuses of their legislature, that is not here? But their number is objected to, as being too small. I should reluctantly assent to this representative body, did I conceive it consisted of too few.

It is an established maxim, that such a body ought to be numerous enough to be well acquainted with the interest of the people, to prevent corruption, and give a chance to men of merit to be elected. If the number be not sufficient for these purposes, I confess it to be a defect. The number is sixty-five, of which ten represent this state. Cannot they inform themselves of the situation of America? I appeal to those who hear me, if they could not rely on the intelligence of ten men they could fix upon, sooner than upon any crowd they could have. I do not reflect on my countrymen; but there is a certain listlessness and inattention to the interest of the community, such indecision or faction in numerous bodies, that I would rather depend on the virtue and knowledge of some few men than on ever so many. The mode of their election must induce us to believe that they will be men of experience and information. The state will be laid off and divided into ten districts: from each of these a man is to be elected. He must be really the choice of the people, not the man who can distribute the most gold; for the riches of Crœsus would not avail. The qualifications of the electors being the same as those of the representatives for the state legislatures, and the election being under the control of the legislature, the prohibitory provisions against undue means of procuring votes to the state representation extend to the federal representatives: the extension of the sphere of election to so considerable a district will render it impossible for contracted influence, or local intrigues, or personal interest, to procure an election. Inquiries will be made, by the voters, into the characters of the candidates. Greater talents, and a more extensive reputation, will be necessary to procure an election for the federal than for the state representation. The federal representatives must therefore be well known for their integrity, and their knowledge of the country they represent. We shall have ten men thus elected

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What are they going yonder for? Not to consult for Virginia alone, but for the interest of the United States collectively. Will not such men derive sufficient information from their own knowledge of their respective states, and from the codes of the different states? The want of information ought no longer to be urged as an objection.

With respect to merit, sir, the house must be satisfied that there is ample room for it. A cottager will receive the votes of this country, as well as the descendant of any aristocrat of this country. Is it not notorious that virtue and ability have been preferred generally, here, to virtue and connections? The present number, sixty-five, is to be increased according to the progressive augmentation of the number of the people. From the present number of inhabitants, which is estimated at three hundred and fifty-two thousand whites, and two hundred and thirty-six thousand blacks, we shall be entitled to fifteen representatives. But here another objection will be offered: it will be complained that the taxes will be increased according to the number of representatives; on which I will only observe here, that the same rule operates in all the states, and that it is not more unjust or oppressive in one state than in another. The number of representatives is as great as can be paid by America at this time; and whatever other gentlemen may conclude on that subject, I think, for my part, that it would be fortunate if the number was to continue as it is at present for a long time; or, at least, that it should be limited not to exceed a certain amount; for, if you swell the legislative list to such a degree as the increase of population, at a reasonable calculation, will, at a period not very remote, entitle the people to send, it will introduce corruption and confusion, and prevent that secrecy without which success can never be expected in negotiations or other transactions. It was my purpose to answer the objections against the power of the national government to lay direct taxes, and against the mode of representation.

It is needless to dwell much longer on the subject. Were one to rise from the dead to declare the expediency of that power, I could not be more firmly persuaded than I am now of its propriety. To dissuade us from conceding this power, gentlemen alarm us with apprehensions that the most intolerable oppressions will be committed by the federal collectors.

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Let us consider this dispassionately, and whether the idea be well founded, which is suggested, that a conflict will frequently happen between the state and congressional collector for property seized and claimed by both. If there be no necessity, or strong temptation, to increase the present number of officers, no addition will be made to them. Congress will have every inducement, and, from the mode of their appointment, must be inclined, to lighten the burdens of the people. They can derive no advantage from a contrary conduct, In other countries, where the fate of the poor is wretched, officers are created merely for the emolument of certain individuals; but, by the structure of this government, the interest of the people must always be considered; nor will any but necessary officers be created. The number of officers, and their compensations, will be as inconsiderable as the nature of their business will admit of. With respect to collectors of the general taxes, I have not the least doubt that Congress will employ the state officers and sheriffs, because it will be economical, and agreeable to the people; a considerable sum will be saved by it. They will employ such men, Mr. Chairman, unless they determine to throw away the public money in an unjustifiable manner. They will never adopt measures which may produce discontent in the country, when they can effect the same purpose by peaceable and satisfactory means. With regard to any personal abuse or misconduct of a collector, such an officer would be amenable to the laws, like any other citizen. He is only protected by the law where he acts lawfully: in such cases, the evil would not be repeated; it would not continue. Congress can take away their offices from such men as abuse them, and give them to others. It cannot be believed that they will carry their wickedness so far as to trust men of this stamp.

As to the mode of paying the taxes, little need be said: it is immaterial which way they are to be paid; for they are to be paid only once. I had an objection which pressed heavily on my mind: I was solicitous to know the objects of taxation. I wished to make some discrimination with regard to the demands of Congress, and of the states, on the same object. As neither can restrain the other in this case — as the power of both is unlimited — it will be their interest mutually to avoid interferences: it will most certainly be the

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interest of either to avoid imposing a tax on an article which shall have been previously taxed by the other. This consideration, and the structure of the government, satisfy me. I cannot foretell, in the course of human events, what Virginia and the United States may be exposed to, blindfolded as I am with respect to futurity; but I would not restrain Congress in this case, unless I meant to destroy the government itself. What will be the consequence of withholding this power from Congress? Will it not be reduced to the most dangerous distress, if a war should happen? The case has happened, and may again. In case of domestic war, or an invasion, every shilling they could lay their hands on would be necessary, but not sufficient, to carry it on. What could the general government do without this force to procure money, for the prosecution of the war and its other exigencies? I beg the friends of the Union to consider the necessity of this power: without it we may abandon the government altogether: it is the soul of the government; no substitute will answer in its stead. The history of other confederacies will instruct us that the general government must operate on the individuals of the community, or else be totally insufficient. Not ancient confederacies only, but certain modern ones, will point out to us the horrid situation in which these states must be involved, unless the general government be vested with this power. The history of those confederacies will discover to us the dreadful misfortunes which their people will have suffered by the imbecility of their governments. If some other gentleman will not, I shall discover, at another opportunity, that mournful history.

Mr. MADISON. Mr. Chairman, in considering this great subject, I trust we shall find that part which gives the general government the power of laying and collecting taxes indispensable, and essential to the existence of any efficient or well-organized system of government: if we consult reason, and be ruled by its dictates, we shall find its justification there: if we review the experience we have had, or contemplate the history of nations, here we find ample reasons to prove its expediency. There is little reason to depend for necessary supplies on a body which is fully possessed of the power of withholding them. If a government depends on other governments for its revenues — if it must depend on the voluntary contributions of its members — its

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existence must be precarious. A government which relies on thirteen independent sovereignties for the means of its existence, is a solecism in theory and a mere nullity in practice. Is it consistent with reason that such a government can promote the happiness of any people? It is subversive of every principle of sound policy, to trust the safety of a community with a government totally destitute of the means of protecting itself or its members. Can Congress, after the repeated unequivocal proofs it has experienced of the utter inutility and inefficacy of requisitions, reasonably expect that they would be hereafter effectual or productive? Will not the same local interests, and other causes, militate against a compliance? Whoever hopes the contrary must ever be disappointed. The effect, sir, cannot be changed without a removal of the cause. Let each county in this commonwealth be supposed free and independent; let your revenues depend on requisitions of proportionate quotas from them; let application be made to them repeatedly:—is it to be presumed that they would comply, or that an adequate collection could be made from partial compliances? It is now difficult to collect the taxes from them: how much would that difficulty be enhanced, were you to depend solely on their generosity! I appeal to the reason of every gentleman here, whether he is not persuaded that the present Confederation is as feeble as the government of Virginia would be in that case: to the same reason I appeal, whether it be compatible with prudence to continue a government of such manifest and palpable debility.

If we recur to history, and review the annals of mankind, I undertake to say that no instance can be produced, by the most learned man, of any confederate government that will justify a continuation of the present system, or that will not demonstrate the necessity of this change, and of substituting, for the present pernicious and fatal plan, the system now under consideration, or one equally energetic. The uniform conclusion drawn from a review of ancient and modern confederacies is, that, instead of promoting the public happiness, or securing public tranquillity, they have, in every instance, been productive of anarchy and confusion, ineffectual for the preservation of harmony, and a prey to their own dissensions and foreign invasions.

The Amphictyonic league resembled our Confederation in

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its nominal powers; it was possessed of rather more power. The component states retained their sovereignty, and enjoyed an equality of suffrage in the federal council. But, though its powers were more considerable in many respects than those of our present system, yet it had the same radical defect. Its powers were exercised over its individual members, in their political capacities. To this capital defect it owed its disorders and final destruction. It was compelled to recur to the sanguinary coercion of war to enforce its decrees. The struggles consequent on a refusal to obey a decree, and an attempt to enforce it, produced the necessity of applying to foreign assistance. By complying with such an application, together with his intrigues, Philip of Macedon acquired sufficient influence to become a member of the league. This artful and insidious prince soon after became master of their liberties.

The Achæan league, though better constructed than the Amphictyonic, in material respects, was continually agitated with domestic dissensions, and driven to the necessity of calling in foreign aid; this, also, eventuated in the demolition of their confederacy. Had they been more closely united, their people would have been happier; and their united wisdom and strength would not only have rendered unnecessary all foreign interpositions in their affairs, but would have enabled them to repel the attack of an enemy. If we descend to more modern examples, we shall find the same evils resulting from the same sources.

The Germanic system is neither adequate to the external defence nor internal felicity of the people. The doctrine of quotas and requisitions flourishes here. Without energy, without stability, the empire is a nerveless body. The most furious conflicts, and the most implacable animosities, between its members, strikingly distinguish its history. Concert and cooperation are incompatible with such an injudiciously constructed system.

The republic of the Swiss is sometimes instanced for its stability; but even there, dissensions and wars of a bloody nature have been frequently seen between the cantons. A peculiar coincidence of circumstances contributes to the continuance of their political connection. Their feeble association owes its existence to their singular situation. There is a schism, this moment, in their confederacy, which, with-

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out the necessity of uniting for their external defence, would immediately produce its dissolution.

The confederate government of Holland is a further confirmation of the characteristic imbecility of such governments. From the history of this government we might derive lessons of the most important utility.

[Here Mr. Madison quoted sundry passages from De Witt respecting the people of Holland, and the war which they had so long supported against the Spanish monarch, showing the impolitic and injudicious structure of their confederacy; that it was entirely destitute of energy, because their revenues depended chiefly on requisitions; that, during that long war, the provinces of Guelderland and Overyssel had not paid their respective quotas, but had evaded, altogether, their payments; in consequence of which, two sevenths of the resources of the community had never been brought into action, nor contributed in the least towards the prosecution of the war; that the fear of pressing danger stimulated Holland and the other provinces to pay all the charges of the war; that those two provinces had continued their delinquencies; that the province of Holland alone paid more than all the rest — still those provinces who paid up their proportional shares claimed from the failing states the amount of their arrearages; that the most fatal consequences had nearly resulted from the difficulty of adjusting those claims, and from the extreme aversion of the delinquent states to discharge even their most solemn engagements; that there are existing controversies between the provinces on this account at present; and, to add to the evils consequent upon requisitions, that unanimity, and the revision and sanction of their constituents, were necessary to give validity to the decisions of the States-General.]

Mr. Madison then added, that these radical defects in their confederacy must have dissolved their association long ago, were it not for their peculiar position — circumscribed in a narrow territory; surrounded by the most powerful nations in the world; possessing peculiar advantages from their situation — an extensive navigation and a powerful navy — advantages which it was clearly the interest of those nations to diminish or deprive them of; and that their late unhappy dissensions were manifestly produced by the vices of their system. He then continued: We may derive much benefit from the experience of that unhappy country. Governments destitute of energy will ever produce anarchy. These facts are worthy the most serious consideration of every gentleman here. Does not the history of these confederacies coincide with the lesson drawn from our own experience? I most earnestly pray that America may have sufficient wisdom to avail herself of the instructive information she may derive from a contemplation of the sources of

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their misfortunes, and that she may escape a similar fate by avoiding the causes from which their infelicity sprang. If the general government is to depend on the voluntary contribution of the states for its support, dismemberment of the United States may be the consequence. In cases of imminent danger, the states more immediately exposed to it only would exert themselves; those remote from it would be too supine to interest themselves warmly in the fate of those whose distresses they did not immediately perceive. The general government ought, therefore, to be empowered to defend the whole Union.

Must we not suppose that those parts of America which are most exposed will first be the scenes of war? Those nations whose interest is incompatible with an extension of our power, and who are jealous of our resources to become powerful and wealthy, must naturally be inclined to exert every means to prevent our becoming formidable. Will they not be impelled to attack the most exposed parts of the Union? Will not their knowledge of the weakness of our government stimulate them the more readily to such an attack? Those parts to which relief can be afforded with most difficulty are the extremities of the country, and will be the first objects of our enemies. The general government, having no resources beyond what are adequate to its existing necessities, will not be able to afford any effectual succor to those parts which may be invaded.

America, in such a case, would palpably perceive the danger and folly of withholding from the Union a power sufficient to protect the whole territory of the United States. Such an attack is far from improbable; and if it be actually made, it is difficult to conceive a possibility of escaping the catastrophe of a dismemberment. On this subject we may receive an estimable and instructive lesson from an American confederacy — from an example which has happened in our country, and which applies to us with peculiar force, being most analogous to our situation: I mean that species of association or union which subsisted in New England. The colonies of Massachusetts, Bristol, Connecticut, and New Hampshire, were confederated together.

The object of that confederacy was, primarily, to defend themselves against the inroads and depredations of the Indians. They had a common council, consisting of deputies

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from each party, with an equality of suffrage in their delib erations. The general expenditures and charges were to be adequately defrayed. Its powers were very similar to those of the Confederation. Its history proves clearly that a gov ernment founded on such principles must ever disappoint the hopes of those who expect its operation to be conducive to the public happiness.

There are facts on record to prove that, instead of answering the end of its institution, or the expectation of its framers, it was violated with impunity, and only regarded when it coincided perfectly with the views and immediate interests of the respective parties.

The strongest member of the union availed itself of its circumstances to infringe their confederacy. Massachusetts refused to pay its quotas. In the war between England and Holland, it was found particularly necessary to make exertions for the protection of that country.

Massachusetts, being then more powerful and less exposed than the other colonies, refused its contributions to the general defence. In consequence of this, the common council remonstrated against the council of Massachusetts. This altercation terminated in the dissolution of their union. From this brief account of a system perfectly resembling our present one, we may easily divine the inevitable consequences of a longer adherence to the latter.

[Mr. Madison then recapitulated many instances of the prevalent persuasion of the wisest patriots of the states, that the safety of all America depended on union, and that the government of the United States must be possessed of an adequate degree of energy, or that otherwise their connection could not be justly denominated a union. He likewise enumerated the expedients that had been attempted by the people of America to form an intimate association, from the meeting at New York, in the year 1754, downwards; that their sentiments on this subject had been uniform, both in their colonial and independent conditions; and that a variety of causes had hitherto prevented the adoption of an adequate system.]

He then continued thus: If we take experience for our guide, we shall find still more instructive direction on this subject. The weakness of the existing articles of the Union showed itself during the war. It has manifested itself, since the peace, to such a degree as admits of no doubt, to a rational, intelligent, and unbiased mind, of the necessity of alteration; nay, this necessity is obvious to all America; it has forced itself on the minds of the people.

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The committee has been informed that the Confederation was not completed till the year 1781, when a great portion of the war was ended; consequently, no part of the merit of the antecedent operations of the war could justly be attributed to that system. Its debility was perceived almost as soon as it was put in operation. A recapitulation of the proofs which have been experienced of its inefficacy is unnecessary. It is most notorious that feebleness universally marked its character. Shall we be safe, in another war, in the same situation? That instrument required the voluntary contributions of the states, and thereby sacrificed some of our best privileges. The most intolerable and unwarrantable oppressions were committed on the people during the late war. The gross enormity of those oppressions might have produced the most serious consequences, were it not for the spirit of liberty, which preponderated against every consideration.

A scene of injustice, partiality, and oppression, may bring heavenly vengeance on any people. We are now, by our suffering, expiating the crimes of the otherwise glorious revolution. Is it not known to every member of this committee, that the great principles of a free government were reversed through the whole progress of that scene? Was not every state harassed? Was not every individual oppressed, and subjected to repeated distresses? Was this right? Was it a proper form of government that warranted, authorized, or overlooked, the most wanton deprivation of property? Had the government been vested with complete power to procure a regular and adequate supply of revenue, those oppressive measures would have been unnecessary. But, sir, can it be supposed that a repetition of such measures would ever be acquiesced in? Can a government that stands in need of such measures secure the liberty, or promote the happiness or glory, of any country? If we do not change this system, consequences must ensue that gentlemen do not now apprehend. If other testimony were necessary, I might appeal to that which I am sure is very weighty, but which I mention with reluctance. At the conclusion of the war, the man who had the most extensive acquaintance with the nature of the country, who well understood its interests, and who had given the most unequivocal and most brilliant proofs of attachment to its welfare, when he laid down his arms, wherewith he had so nobly

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and successfully defended his country, publicly testified his disapprobation of the present system, and suggested that some alteration was necessary to render it adequate to the security of our happiness. I did not introduce that great name to bias any gentleman here. Much as I admire and revere the man, I consider these members as not to be actuated by the influence of any man; but I introduced him as a respectable witness to prove that the Articles of the Confederation were inadequate, and that we must resort to something else. His modesty did not point out what ought to be done, but said that some great change was necessary. But, sir, testimony, if wished for, may be found in abundance, and numerous conclusive reasons urged for this change. Experience was daily producing such irresistible proofs of the defects of this system, this commonwealth was induced to exert her influence to meliorate it: she began that noble work, in which I hope she will persist: she proposed to revise it; her proposition met with that concurrence which that of a respectable party will always meet. I am sure, if demonstration were necessary on the part of this commonwealth, reasons have been abundantly heard, in the course of this debate, manifold and cogent enough, not only to operate conviction, but to disgust an attentive hearer. Recollect the resolution of the year 1784. It was then found that the whole burden of the Union was sustained by a few states. This state was likely to be saddled with a very disproportionate share. That expedient was proposed (to obviate this inconvenience) which has been placed in its true light. It has been painted in sufficient horrors by the honorable gentleman who spoke last.

I agree with the honorable gentleman (Mr. Henry) that national splendor and glory are not our objects; but does he distinguish between what will render us secure and happy at home, and what will render us respectable abroad? If we be free and happy at home, we shall be respectable abroad.

The Confederation is so notoriously feeble, that foreign nations are unwilling to form any treaties with us; they are apprized that our general government cannot perform any of its engagements, but that they may be violated at pleasure by any of the states. Our violation of treaties already entered into proves this truth unequivocally. No nation will, therefore, make any stipulations with Congress, con

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ceding any advantages of importance to us: they will be the more averse to entering into engagements with us, as the imbecility of our government enables them to derive many advantages from our trade, without granting us any return. But were this country united by proper bands, in addition to other great advantages, we could form very beneficial treaties with foreign states. But this can never happen without a change in our system! Were we not laughed at by the minister of that nation, from which we may be able yet to extort some of the most salutary measures for this country? Were we not told that it was necessary to temporize till our government acquired consistency? Will any nation relinquish national advantages to us? You will be greatly disappointed, if you expect any such good effects from this contemptible system. Let us recollect our conduct to that country from which we have received the most friendly aid. How have we dealt with that benevolent ally? Have we complied with our most sacred obligations to that nation? Have we paid the interest punctually from year to year? Is not the interest accumulating, while not a shilling is discharged of the principal? The magnanimity and forbearance of that ally are so great that she has not called upon us for her claims, even in her own distress and necessity. This, sir, is an additional motive to increase our exertions. At this moment of time a very considerable amount is due from us to that country and others.

[Here Mr. Madison mentioned the amount of the debts due to different foreign nations.]

We have been obliged to borrow money even to pay the interest of our debts. This is a ruinous and most disgraceful expedient. Is this a situation on which America can rely for security and happiness? How are we to extricate ourselves? The honorable member told us we might rely on the punctuality and friendship of the states, and that they will discharge their quotas for the future. The contributions of the states have been found inadequate from the beginning, and are diminishing instead of increasing. From the month of June, 1787, till June, 1788, they have only paid 276,641 dollars into the federal treasury for the purposes of supporting the national government, and discharging the interest of the national debts — a sum so very insufficient, that it must greatly alarm the friends of their country. Sugges-

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tions and strong assertions dissipate before these facts. I shall no longer fatigue the committee at this time, but will resume the subject as early as I can.

Mr. HENRY. I have thought, and still think, that a full investigation of the actual situation of America ought to precede any decision on this great and important question. That government is no more than a choice among evils, is acknowledged by the most intelligent among mankind, and has been a standing maxim for ages. If it be demonstrated that the adoption of the new plan is a little or a trifling evil, then, sir, I acknowledge that adoption ought to follow; but, sir, if this be a truth, that its adoption may entail misery on the free people of this country, I then insist that rejection ought to follow. Gentlemen strongly urge, its adoption will be a mighty benefit to us; but, sir, I am made of so incredulous materials, that assertions and declarations do not satisfy me. I must be convinced, sir. I shall retain my infidelity on that subject till I see our liberties secured in a manner perfectly satisfactory to my understanding.

There are certain maxims by which every wise and enlightened people will regulate their conduct. There are certain political maxims which no free people ought ever to abandon — maxims of which the observance is essential to the security of happiness. It is impiously irritating the avenging hand of Heaven, when a people, who are in the full enjoyment of freedom, launch out into the wide ocean of human affairs, and desert those maxims which alone can preserve liberty. Such maxims, humble as they are, are those only which can render a nation safe or formidable. Poor little humble republican maxims have attracted the admiration, and engaged the attention, of the virtuous and wise in all nations, and have stood the shock of ages. We do not now admit the validity of maxims which we once delighted in. We have since adopted maxims of a different, but more refined nature — new maxims, which tend to the prostration of republicanism.

We have one, sir, *that all men are by nature free and independent, and have certain inherent rights, of which, when they enter into society, they cannot by any compact deprive or divest their posterity.* We have a set of maxims of the same spirit, which must be beloved by every friend to liberty, to virtue, to mankind: our bill of rights contains those admirable maxims.

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Now, sir, I say, let us consider whether the picture given of American affairs ought to drive us from those beloved maxims.

The honorable gentleman, Governor Randolph, has said that it is too late in the day for us to reject this new plan. That system which was once execrated by the honorable member must now be adopted, let its defects be ever so glaring. That honorable member will not accuse me of want of candor, when I cast in my mind what he has given the public,* and compare it to what has happened since. It seems to me very strange and unaccountable that that which was the object of his execration should now receive his encomiums. Something extraordinary must have operated so great a change in his opinion. It is too late in the day! Gentlemen must excuse me if they should declare, again and again, that it was too late, and I should think differently. I never can believe, sir, that it is too late to save all that is precious: if it be proper, and, independently of every external consideration, wisely constructed, let us receive it: but, sir, shall its adoption by eight states induce us to receive it, if it be replete with the most dangerous defects? They urge that subsequent amendments are safer than previous amendments, and that they will answer the same ends.

At present we have our liberties and privileges in our own hands. Let us not relinquish them. Let us not adopt this system till we see them secure. There is some small possibility that, should we follow the conduct of Massachusetts, amendments might be obtained. There is a small possibility of amending any government; but, sir, shall we abandon our most inestimable rights, and rest their security on a mere possibility? The gentleman fears the loss of the Union. If eight states have ratified it unamended, and we should rashly imitate their precipitate example, do we not thereby disunite from several other states? Shall those who have risked their lives for the sake of the Union be at once thrown out of it? If it be amended, every state will accede to it; but by an imprudent adoption in its defective and dangerous state, a schism must inevitably be the consequence.

* Alluding to his excellency's letter on that subject to the speaker of the House of Delegates, vol. i. p. 482.

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I can never, therefore, consent to hazard our most unalienable rights on an absolute uncertainty.

You are told there is no peace, although you fondly flatter yourselves that all is peace; no peace; a general cry and alarm in the country; commerce, riches, and wealth, vanished; citizens going to seek comforts in other parts of the world; laws insulted; many instances of tyrannical legislation. These things, sir, are new to me. He has made the discovery. As to the administration of justice, I believe that failures in commerce, &c., cannot be attributed to it. My age enables me to recollect its progress under the old government. I can justify it by saying that it continues in the same manner in this state as it did under the former government. As to other parts of the continent, I refer that to other gentlemen. As to the ability of those who administer it, I believe they would not suffer by a comparison with those who administered it under the royal authority. Where is the cause of complaint if the wealthy go away? Is this, added to the other circumstances, of such enormity, and does it bring such danger over this commonwealth, as to warrant so important and so awful a change, in so precipitate a manner? As to insults offered to the laws, I know of none. In this respect, I believe this commonwealth would not suffer by a comparison with the former government. The laws are as well executed, and as patiently acquiesced in, as they were under the royal administration. Compare the situation of the country — compare that of our citizens to what it was then — and decide whether persons and property are not as safe and secure as they were at that time. Is there a man in this commonwealth whose person can be insulted with impunity? Cannot redress be had here for personal insults or injuries, as well as in any part of the world — as well as in those countries where aristocrats and monarchs triumph and reign? Is not the protection of property in full operation here? The contrary cannot with truth be charged on this commonwealth. Those severe charges, which are exhibited against it, appear to be totally groundless. On a fair investigation, we shall be found to be surrounded by no real dangers.

We have the animating fortitude and persevering alacrity of republican men to carry us through misfortunes and calamities. It is the fortune of a republic to be able to

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withstand the stormy ocean of human vicissitudes. I know of no danger awaiting us. Public and private security are to be found here in the highest degree. Sir, it is the fortune of a free people not to be intimidated by imaginary dangers. Fear is the passion of slaves. Our political and natural hemisphere are now equally tranquil. Let us recollect the awful magnitude of the subject of our deliberation; let us consider the latent consequences of an erroneous decision, and let not our minds be led away by unfair misrepresentations and uncandid suggestions. There have been many instances of uncommon lenity and temperance used in the exercise of power in this commonwealth. I could call your recollection to many that happened during the war and since; but every gentleman here must be apprized of them.

The honorable member has given you an elaborate account of what he judges tyrannical legislation, and an *ex post facto law*, (in the case of Josiah Philips.) He has misrepresented the facts. That man was not executed by a tyrannical stroke of power. Nor was he a Socrates. He was a fugitive murderer and an outlaw — a man who commanded an infamous banditti, and at a time when the war was at the most perilous stage. He committed the most cruel and shocking barbarities. He was an enemy to the human name. Those who declare war against the human race may be struck out of existence as soon as they are apprehended. He was not executed according to those beautiful legal ceremonies which are pointed out by the laws in criminal cases. The enormity of his crimes did not entitle him to it. I am truly a friend to legal forms and methods; but, sir, the occasion warranted the measure. A pirate, an outlaw, or a common enemy to all mankind, may be put to death at any time. It is justified by the laws of nature and nations.

The honorable member tells us, then, that there are burnings and discontents in the hearts of our citizens in general, and that they are dissatisfied with their government. I have no doubt the honorable member believes this to be the case, because he says so. But I have the comfortable assurance that it is a certain fact that it is not so. The middle and lower ranks of people have not those illuminated ideas which the well-born are so happily possessed of; they cannot so readily perceive latent objects. The microscopic eyes of modern statesmen can see abundance of defects in old sys-

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tems; and their illuminated imaginations discover the neces sity of a change. They are captivated by the parade of the number ten — the charms of the ten miles square. Sir, I fear this change will ultimately lead to our ruin. My fears are not the force of imagination; they are but too well founded. I tremble for my country; but, sir, I trust, I rely, and I am confident, that this political speculation has not taken so strong a hold of men's minds as some would make us believe.

The dangers which may arise from our geographical situation will be more properly considered a while hence. At present, what may be surmised on the subject, with respect to the adjacent states, is merely visionary. Strength, sir, is a relative term. When I reflect on the natural force of those nations that might be induced to attack us, and consider the difficulty of the attempt, and uncertainty of the success, and compare thereto the relative strength of our country, I say that we are strong. We have no cause to fear from that quarter; we have nothing to dread from our neighboring states. The superiority of our cause would give us an advantage over them, were they so unfriendly or rash as to attack us. As to that part of the community, which the honorable gentleman spoke of as being in danger of being separated from us, — what excitement or inducement could its inhabitants have to wish such an event? It is a matter of doubt whether they would derive any advantage to themselves, or be any loss to us, by such a separation. Time has been, and may yet come, when they will find it their advantage and true interest to be united with us. There is no danger of a dismemberment of our country, unless a Constitution be adopted which will enable the government to plant enemies on our backs. By the Confederation, the rights of territory are secured. No treaty can be made without the consent of nine states. While the consent of nine states is necessary to the cession of territory, you are safe. If it be put in the power of a less number, you will most infallibly lose the Mississippi. As long as we can preserve our unalienable rights, we are in safety. This new Constitution will involve in its operation the loss of the navigation of that valuable river.

The honorable gentleman cannot be ignorant of the *Spanish transactions.* A treaty had been nearly entered into with Spain, to relinquish that navigation. That re-

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linquishment would absolutely have taken place, had the consent of seven states been sufficient. The honorable gentleman told us then, that, eight states having adopted the system, we cannot suppose they will recede on our account. I know not what they may do; but this I know — that a people of infinitely less importance than those of Virginia stood the terror of war. Vermont, sir, withstood the terror of thirteen states. Maryland did not accede to the Confederation till the year 1781. These two states, feeble as they are comparatively to us, were not afraid of the whole Union. Did either of these states perish? No, sir, they were admitted freely into the Union. Will not Virginia, then, be admitted? I flatter myself that those states which have ratified the new plan of government will open their arms and cheerfully receive us, although we should propose certain amendments as the conditions on which we should ratify it. During the late war, all the states were in pursuit of the same object. To obtain that object, they made the most strenuous exertions. They did not suffer trivial considerations to impede its acquisition. Give me leave to say that, if the smallest states in the Union were admitted into it, after having unreasonably procrastinated their accession, the greatest and most mighty state in the Union will be easily admitted, when her reluctance to an immediate accession to this system is founded on the most reasonable grounds. When I call this the most mighty state in the Union, do I not speak the truth? Does not Virginia surpass every state in the Union, in number of inhabitants, extent of territory, felicity of position, and affluence and wealth? Some infatuation hangs over men's minds, that they will inconsiderately precipitate into measures the most important, and give not a moment's deliberation to others, nor pay any respect to their opinions. Is this federalism? Are these the beloved effects of the federal spirit, that its votaries will never accede to the just propositions of others? Sir, were there nothing objectionable in it but that, I would vote against it. I desire to have nothing to do with such men as will obstinately refuse to change their opinions. Are our opinions not to be regarded? I hope that you will recollect that you are going to join with men who will pay no respect even to this state.

Switzerland consists of thirteen cantons expressly con-

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federated for national defence. They have stood the shock of four hundred years; that country has enjoyed internal tranquillity most of that long period. Their dissensions have been, comparatively to those of other countries, very few What has passed in the neighboring countries? War, dissensions, and intrigues; — Germany involved in the most deplorable civil war thirty years successively, continually convulsed with intestine divisions, and harassed by foreign wars! France, with her mighty monarchy, perpetually at war. Compare the peasants of Switzerland with those of any other mighty nation: you will find them far more happy: for one civil war among them, there have been five or six among other nations: their attachment to their country and freedom, their resolute intrepidity in their defence, the consequent security and happiness which they have enjoyed, and the respect and awe which these things produced in the bordering nations, have signalized those republicans. Their valor, sir, has been active; every thing that sets in motion the springs of the human heart engaged them to that protection of their inestimable privileges. They have not only secured their own liberty, but have been the arbiters of the fate of other people. Here, sir, contemplate the triumph of the republican governments over the pride of monarchy. I acknowledge, sir, that the necessity of national defence has prevailed in invigorating their councils and arms, and has been, in a considerable degree, the means of keeping these honest people together. But, sir, they have had wisdom enough to keep together, and render themselves formidable. Their heroism is proverbial. They would heroically fight for their government and their laws. One of the illumined sons of these times would not fight for those objects. Those virtuous and simple people have not a mighty and splendid President, nor enormously expensive navies and armies, to support. No, sir; those brave republicans have acquired their reputation no less by their undaunted intrepidity than by the wisdom of their frugal and economical policy. Let us follow their example, and be equally happy. The honorable member advises us to adopt a measure which will destroy our bill of rights; for, after having his picture of nations, and his reasons for abandoning all the powers retained to the states by the Con

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federation, I am more firmly persuaded of the impropriety of adopting this new plan in its present shape.

I had doubts of the power of those who went to the Convention, but now we are possessed of it, let us examine it. When we trusted the great object of revising the Confederation to the greatest, and best, and most enlightened, of our citizens, we thought their deliberations would have been solely confined to that revision. Instead of this, a new system, totally different in its nature, and vesting the most extensive powers in Congress, is presented. Will the ten men you are to send to Congress be more worthy than those seven were? If power grew so rapidly in their hands, what may it not do in the hands of others? If those who go from this state will find power accompanied with temptation, our situation must be truly critical. When about forming a government, if we mistake the principles, or commit any other error, the very circumstance promises that power will be abused. The greatest caution and circumspection are therefore necessary; nor does this proposed system, on its investigation here, deserve the least charity.

The honorable gentleman says that the national government is without energy. I perfectly agree with him; and when he cries out, *Union*, I agree with him; but I tell him not to mistake the end for the means. The end is union; the most capital means, I suppose, are an army and navy. On a supposition, I will acknowledge this; still the bare act of agreeing to that paper, though it may have an amazing influence, will not pay our millions. There must be things to pay debts. What these things are, or how they are to be produced, must be determined by our political wisdom and economy.

The honorable gentleman alleges that previous amendments will prevent the junction of our riches from producing great profits and emoluments, which would enable us to pay our public debts, by excluding us from the Union. I believe, sir, that a previous ratification of a system notoriously and confessedly defective will endanger our riches, our liberty, our all. Its defects are acknowledged; they cannot be denied. The reason offered by the honorable gentleman for adopting this defective system, is its adoption by the eight states. I say, sir, that, if we present nothing but what is

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reasonable in the shape of amendments, they will receive us Union is as necessary for them as for us. Will they, then, be so unreasonable as not to join us? If such be their dis position, I am happy to know it in time.

The honorable member then observed, that nations will expend millions for commercial advantages; that is, that they will deprive you of every advantage if they can. Apply this another way. Their cheaper way, instead of laying out millions in making war upon you, will be to corrupt your senators. I know that, if they be not above all price, they may make a sacrifice of our commercial interests. They may advise your President to make a treaty that will not only sacrifice all your commercial interests, but throw prostrate your bill of rights. Does he fear that their ships will outnumber ours on the ocean, or that nations whose interest comes in contact with ours, in the progress of their guilt, will perpetrate the vilest expedients to exclude us from a participation in commercial advantages? Does he advise us, in order to avoid this evil, to adopt a Constitution, which will enable such nations to obtain their ends by the more easy mode of contaminating the principles of our senators? Sir, if our senators will not be corrupted, it will be because they will be good men, and not because the Constitution provides against corruption; for there is no real check secured in it and the most abandoned and profligate acts may with im punity be committed by them.

With respect to Maryland, what danger from thence? I know none. I have not heard of any hostility premeditated or committed. Nine tenths of the people have not heard of it. Those who are so happy as to be illumined have not informed their fellow-citizens of it. I am so valiant as to say that no danger can come, from that source, sufficient to make me abandon my republican principles. The honorable gentleman ought to have recollected that there were no tyrants in America, as there are in Europe. The citizens of republican borders are only terrible to tyrants. Instead of being dangerous to one another, they mutually support one another's liberties. We might be confederated with the adopting states without ratifying this system. No form of government renders a people more formidable. A confederacy of states joined together becomes strong as the United Netherlands. The government of Holland, execrated as it is, proves that

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the present Confederation is adequate to every purpose of human association. There are seven provinces confederated together for a long time, containing numerous opulent cities, and many of the finest ports in the world. The recollection of the situation of that country would make me execrate monarchy. The singular felicity and success of that people are unparalleled: freedom has done miracles there in reclaiming land from the ocean. It is the richest spot on the face of the globe. Have they no men or money? Have they no fleets or armies? Have they no arts or sciences among them? How did they repel the attacks of the greatest nations in the world? How have they acquired their amazing influence and power? Did they consolidate government, to effect these purposes, as we do? No, sir, they have trampled over every obstacle and difficulty, and have arrived at the summit of political felicity, and of uncommon opulence, by means of a confederacy — that very government which gentlemen affect to despise. They have, sir, avoided a consolidation as the greatest of evils. They have lately, it is true, made one advance to that fatal progression. This misfortune burst on them by iniquity and artifice. That stadtholder, that executive magistrate, contrived it, in conjunction with other European nations. It was not the choice of the people. Was it owing to his energy that this happened? If two provinces have paid nothing, what have not the rest done? And have not these two provinces made other exertions? Ought they, to avoid this inconvenience, to have consolidated their different states, and have a ten miles square? Compare that little spot, nurtured by liberty, with the fairest country in the world. Does not Holland possess a powerful navy and army, and a full treasury? They did not acquire these by debasing the principles and trampling on the rights of their citizens. Sir, they acquired these by their industry, economy, and by the freedom of their government. Their commerce is the most extensive in Europe; their credit is unequalled; their felicity will be an eternal monument of the blessings of liberty: every nation in Europe is taught by them what they are, and what they ought to be. The contrast between those nations and this happy people is the most splendid spectacle for republicans — the greatest cause of exultation and triumph to the sons of freedom. While other nations, precipitated by the rage of

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ambition or folly, have, in the pursuit of the most magnificent projects, riveted the fetters of bondage on themselves and descendants, these republicans secured their political happiness and freedom. Where is there a nation to be compared to them? Where is there now, or where was there ever, a nation of so small a territory, and so few in number, so powerful, so wealthy, so happy? What is the cause of this superiority? Liberty, sir, the freedom of their government. Though they are now, unhappily, in some degree consolidated, yet they have my acclamations, when put in contrast with those millions of their fellow-men who lived and died like slaves. The dangers of a consolidation ought to be guarded against in this country. I shall exert my poor talents to ward them off. Dangers are to be apprehended in whatever manner we proceed; but those of a consolidation are the most destructive. Let us leave no expedient untried to secure happiness. But, whatever be our decision, I am consoled if American liberty will remain entire only for half a century; and I trust that mankind in general, and our posterity in particular, will be compensated for every anxiety we now feel.

Another gentleman tells us that no inconvenience will result from the exercise of the power of taxation by the general government; that two shillings out of ten may be saved by the impost; and that four shillings may be paid to the federal collector, and four to the state collector. A change of government will not pay money. If, from the probable amount of the imposts, you take the enormous and extravagant expenses which will certainly attend the support of this great consolidated government, I believe you will find no reduction of the public burdens by this new system. The splendid maintenance of the President, and of the members of both houses, and the salaries and fees of the swarm of officers and dependants of the government, will cost this continent immense sums. Double sets of collectors will double the expenses; to those are to be added oppressive excisemen and custom-house officers. Sir, the people have an hereditary hatred to custom-house officers. The experience of the mother country leads me to detest them. They have introduced their baneful influence into the administration, and destroyed one of the most beautiful systems that ever the world saw. Our forefathers enjoyed liberty there while that system was in its purity; but it is now contaminated by influence of every kind.

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The style of the government (*We, the people*) was introduced perhaps to recommend it to the people at large; to those citizens who are to be levelled and degraded to the lowest degree; who are likened to a *herd;* * and who, by the operation of this blessed system, are to be transformed from respectable, independent citizens, to abject, dependent subjects or slaves. The honorable gentleman has anticipated what we are to be reduced to, by degradingly assimilating our citizens to a herd.

[Here Governor Randolph arose, and declared that he did not use that word to excite any odium, but merely to convey an idea of a multitude.]

Mr. Henry replied, that it made a deep impression on his mind, and that he verily believed that system would operate as he had said. He then continued: I will exchange that *abominable* word for *requisitions.* Requisitions, which gentlemen affect to despise, have nothing degrading in them. On this depends our political prosperity. I never will give up that *darling* word *requisitions:* my country may give it up; a majority may wrest it from me, but I will never give it up till my grave. Requisitions are attended with one singular advantage. They are attended by deliberation. They secure to the states the benefit of correcting oppressive errors. If our Assembly thought requisitions erroneous, if they thought the demand was too great, they might at least supplicate Congress to reconsider — that it was a little too much. The power of direct taxation was called by the honorable gentleman the *soul* of the government: another gentleman called it the *lungs* of the government. We all agree that it is the most important part of the body politic. If the power of raising money be necessary for the general government, it is no less so for the states. If money be the vitals of Congress, is it not precious for those individuals from whom it is to be taken? Must I give my soul, my lungs, to Congress? Congress must have our souls; the state must have our souls. This is dishonorable and disgraceful. These two coördinate, interfering, unlimited powers of harassing the community are unexampled: it is unprecedented in history. They are the visionary projects of modern politicians. Tell me not of imaginary means, but of reality; this political

* Governor Randolph had, cursorily, mentioned the word "herd" in his second speech.

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solecism will never tend to the benefit of the community. It will be as oppressive in practice as it is absurd in theory If you part from this, which the honorable gentleman tells you is the soul of Congress, you will be inevitably ruined I tell you, they shall not have the soul of Virginia. They tell us that one collector may collect the federal and state taxes. The general government being paramount to the state legislatures, if the sheriff is to collect for both, — his right hand for Congress, his left for the state, — his right hand being paramount over the left, his collections will go to Congress. We shall have the rest. Deficiencies in collections will always operate against the states. Congress, being the paramount, supreme power, must not be disappointed. Thus Congress will have an unlimited, unbounded command over the soul of this commonwealth. After satisfying their uncontrolled demands, what can be left for the states? Not a sufficiency even to defray the expense of their internal administration. They must therefore glide imperceptibly and gradually out of existence. This, sir, must naturally terminate in a consolidation. If this will do for other people, it never will do for me.

If we are to have one representative for every thirty thousand souls, it must be by implication. The Constitution does not positively secure it. Even say it is a natural implication, — why not give us a right to that proportion in express terms, in language that could not admit of evasions or subterfuges? If they can use implication for us, they can also use implication against us. We are giving power; they are getting power; judge, then, on which side the implication will be used! When we once put it in their option to assume constructive power, danger will follow. Trial by jury, and liberty of the press, are also on this foundation of implication. If they encroach on these rights, and you give your implication for a plea, you are cast; for they will be justified by the last part of it, which gives them full power "to make all laws which shall be necessary and proper to carry their power into execution." Implication is dangerous, because it is unbounded: if it be admitted at all, and no limits be prescribed, it admits of the utmost extension. They say that every thing that is not given is retained. The reverse of the proposition is true by implication. They do not carry their implication so far when they speak of the

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general welfare — no implication when the sweeping clause comes. Implication is only necessary when the existence of privileges is in dispute. The existence of powers is sufficiently established. If we trust our dearest rights to implication, we shall be in a very unhappy situation.

Implication, in England, has been a source of dissension. There has been a war of implication between the king and people. For a hundred years did the mother country struggle under the uncertainty of implication. The people insisted that their rights were implied; the monarch denied the doctrine. The Bill of Rights, in some degree, terminated the dispute. By a bold implication, they said they had a right to bind us in all cases whatsoever. This constructive power we opposed, and successfully. Thirteen or fourteen years ago, the most important thing that could be thought of was to exclude the possibility of construction and implication. These, sir, were then deemed perilous. The first thing that was thought of was a bill of rights. We were not satisfied with your constructive, argumentative rights.

Mr. Henry then declared a bill of rights indispensably necessary; that a general positive provision should be inserted in the new system, securing to the states and the people every right which was not conceded to the general government; and that every implication should be done away. It being now late, he concluded by observing, that he would resume the subject another time.

MONDAY, *June* 9, 1788.

[The 1st and 2d sections still under consideration.]

Mr. HENRY. Mr. Chairman, I find myself again constrained to trespass on the patience of this committee. I wish there was a prospect of union in our sentiments: so much time would not then be taken up. But when I review the magnitude of the subject under consideration, and of dangers which appear to me in this new plan of government, and compare thereto my poor abilities to secure our rights, it will take much more time, in my poor, unconnected way, to traverse the objectionable parts of it; there are friends here who will be abler than myself to make good those objections which to us appear well founded. If we recollect, on last Saturday, I made some observations on some of those dangers which these gentlemen would fain

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persuade us hang over the citizens of this commonwealth to induce us to change the government, and adopt the new plan. Unless there be great and awful dangers, the change is dangerous, and the experiment ought not to be made In estimating the magnitude of these dangers, we are obliged to take a most serious view of them — to see them. to handle them, and to be familiar with them. It is not sufficient to feign mere imaginary dangers; there must be a dreadful reality. The great question between us is, Does that reality exist? These dangers are partially attributed to bad laws, execrated by the community at large. It is said the people wish to change the government. I should be happy to meet them on that ground. Should the people wish to change it, we should be innocent of the dangers. It is a fact that the people do not wish to change their government. How am I to prove it? It will rest on my bare assertion, unless supported by an internal conviction in men's breasts. My poor say-so is a mere nonentity. But, sir, I am persuaded that four fifths of the people of Virginia must have amendments to the new plan, to reconcile them to a change of their government. It is a slippery foundation for the people to rest their political salvation on my or their assertions. No government can flourish unless it be founded on the affection of the people. Unless gentlemen can be sure that this new system is founded on that ground, they ought to stop their career.

I will not repeat what the gentlemen say — I will mention one thing. There is a dispute between us and the Spaniards about the right of navigating the Mississippi. This dispute has sprung from the federal government. I wish a great deal to be said on this subject. I wish to know the origin and progress of the business, as it would probably unfold great dangers. In my opinion, the preservation of that river calls for our most serious consideration. It has been agitated in Congress. Seven states have voted, so that it is known to the Spaniards that, under our existing system, the Mississippi shall be taken from them. Seven states wished to relinquish this river to them. The six Southern States opposed it. Seven states not being sufficient to convey it away, it remains now ours. If I am wrong, there is a number on this floor who can contradict the facts; I will readily retract. This new government, I conceive, will enable those

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states who have already discovered their inclination that way, to give away this river. Will the honorable gentleman advise us to relinquish its inestimable navigation, and place formidable enemies on our backs? This weak, this poor Confederation cannot secure us. We are resolved to take shelter under the shield of federal authority in America. The southern parts of America have been protected by that weakness so much execrated. I hope this will be explained. I was not in Congress when these transactions took place. I may not have stated every fact. I may have misrepresented matters. I hope to be fully acquainted with every thing relative to the object. Let us hear how the great and important right of navigating that river has been attended to, and whether I am mistaken in my opinion that federal measures will lose it to us forever. If a bare majority of Congress can make laws, the situation of our western citizens is dreadful.

We are threatened with danger for the non-payment of our debt due to France. We have information come from an illustrious citizen of Virginia, who is now in Paris, which disproves the suggestions of such danger. This citizen has not been in the airy regions of theoretic speculation: our ambassador is this worthy citizen. The ambassador of the United States of America is not so despised as the honorable gentleman would make us believe. A servant of a republic is as much respected as that of a monarch. The honorable gentleman tells us that hostile fleets are to be sent to make reprisals upon us: our ambassador tells you that the king of France has taken into consideration to enter into commercial regulations, on reciprocal terms, with us, which will be of peculiar advantage to us. Does this look like hostility? I might go farther; I might say, not from public authority, but good information, that his opinion is, that you reject this government. His character and abilities are in the highest estimation; he is well acquainted, in every respect, with this country; equally so with the policy of the European nations. This illustrious citizen advises you to reject this government till it be amended. His sentiments coincide entirely with ours. His attachment to, and services done for, this country are well known. At a great distance from us, he remembers and studies our happiness. Living in splendor and dissipation, he thinks yet of bills of rights — thinks of those little, despised things called *maxims*. Let us follow the sage ad-

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vice of this common friend of our happiness. It is little usual for nations to send armies to collect debts. The house of Bourbon, that great friend of America, will never attack her for her unwilling delay of payment. Give me leave to say, that Europe is too much engaged about objects of greater importance, to attend to us. On that great theatre of the world, the little American matters vanish. Do you believe that the mighty monarch of France, beholding the greatest scenes that ever engaged the attention of a prince of that country, will divert himself from those important objects, and now call for a settlement of accounts with America? This proceeding is not warranted by good sense. The friendly disposition to us, and the actual situation of France, render the idea of danger from that quarter absurd. Would this countryman of ours be fond of advising us to a measure which he knew to be dangerous? And can it be reasonably supposed that he can be ignorant of any premeditated hostility against this country? The honorable gentleman may suspect the account; but I will do our friend the justice to say, that he would warn us of any danger from France.

Do you suppose the Spanish monarch will risk a contest with the United States, when his feeble colonies are exposed to them? Every advance the people make to the westward, makes him tremble for Mexico and Peru. Despised as we are among ourselves, under our present government, we are terrible to that monarchy. If this be not a fact, it is generally said so.

We are, in the next place, frightened by dangers from Holland. We must change our government to escape the wrath of that republic. Holland groans under a government like this new one. A stadtholder, sir, a Dutch president, has brought on that country miseries which will not permit them to collect debts with fleets or armies. The wife of a Dutch stadtholder brought one hundred thousand men against that republic, and prostrated all opposition. This President will bring miseries on us like those of Holland. Such is the condition of European affairs, that it would be *unsafe for them to send fleets* or armies to collect debts. But here, sir, they make a transition to objects of another kind. We are presented with dangers of a very uncommon nature. I am not acquainted with the arts of painting. Some gentlemen have a peculiar talent for them. They are practised with

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great ingenuity on this occasion. As a counterpart to what we have already been intimidated with, we are told that some lands have been sold, which cannot be found; and that this will bring war on this country. Here the picture will not stand examination. Can it be supposed, if a few land speculators and jobbers have violated the principles of probity, that it will involve this country in war? Is there no redress to be otherwise obtained, even admitting the delinquents and sufferers to be numerous? When gentlemen are thus driven to produce imaginary dangers, to induce this Convention to assent to this change, I am sure it will not be uncandid to say that the change itself is really dangerous. Then the Maryland compact is broken, and will produce perilous consequences. I see nothing very terrible in this. The adoption of the new system will not remove the evil. Will they forfeit good neighborhood with us, because the compact is broken? Then the disputes concerning the Carolina line are to involve us in dangers. A strip of land running from the westward of the Alleghany to the Mississippi, is the subject of this pretended dispute. I do not know the length or breadth of this disputed spot. Have they not regularly confirmed our right to it, and relinquished all claims to it? I can venture to pledge that the people of Carolina will never disturb us. The strength of this despised country has settled an immense tract of country to the westward. Give me leave to remark, that the honorable gentleman's observations on our frontiers, north and south, east and west, are all inaccurate.

Will Maryland fight against this country for seeking amendments? Were there not sixty members in that state who went in quest of amendments? Sixty, against eight or ten, were in favor of pursuing amendments. Shall they fight us for doing what they themselves have done? They have sought amendments, but differently from the manner in which I wish amendments to be got. The honorable gentleman may plume himself on this difference. Will they fight us for this dissimilarity? Will they fight us for seeking the object they seek themselves? When they do, it will be time for me to hold my peace. Then, sir, comes Pennsylvania, in terrible array. Pennsylvania is to go in conflict with Virginia. Pennsylvania has been a good neighbor heretofore. She is federal — something terrible — Virginia cannot look her in the face. If we sufficiently attend to the actual situation of things, we

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shall conclude that Pennsylvania will do what we do. A number of that country are strongly opposed to it. Many of them have lately been convinced of its fatal tendency. They are disgorged of their federalism. I beseech you to bring this matter home to yourselves. Was there a possibility for the people of that state to know the reasons of adopting that system, or understand its principles, in so very short a period after its formation? This is the middle of June. Those transactions happened last August. The matter was circulated by every effort of industry, and the most precipitate measures taken to hurry the people into adoption. Yet now, after having had several months to investigate it, a very large part of this community, a great majority of this community, do not understand it. I have heard gentlemen of respectable abilities declare they did not understand it. If, after great pains, men of high learning, who have received the aids of a regular education, do not understand it, — if the people of Pennsylvania understood it in so short a time, it must have been from intuitive understandings, and uncommon acuteness of perception. Place yourselves in their situation; would you fight your neighbors for considering this great and awful matter? If you wish for real amendments, such as the security of the trial by jury, it will reach the hearts of the people of that state. Whatever may be the disposition of the aristocratical politicians of that country, I know there are friends of human nature in that state. If so, they will never make war on those who make professions of what they are attached to themselves.

As to the danger arising from borderers, it is mutual and reciprocal. If it be dangerous for Virginia, it is equally so for them. It will be their true interest to be united with us. The danger of our being their enemies will be a prevailing argument in our favor. It will be as powerful to admit us into the Union, as a vote of adoption, without previous amendments, could possibly be.

Then the savage Indians are to destroy us. We cannot look them in the face. The danger is here divided; they are as terrible to the other states as to us. But, sir, it is well known that we have nothing to fear from them. Our back settlers are considerably stronger than they. Their superiority increases daily. Suppose the states to be confederated all around us; what we want in numbers, we shall

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make up otherwise. Our compact situation and natural strength will secure us. But, to avoid all dangers, we must take shelter under the federal government. Nothing gives a decided importance but this federal government. You will *sip sorrow*, according to the vulgar phrase, if you want any other security than the laws of Virginia.

A number of characters, of the greatest eminence in this country, object to this government for its consolidating tendency. This is not imaginary. It is a formidable reality. If consolidation proves to be as mischievous to this country as it has been to other countries, what will the poor inhabitants of this country do? This government will operate like an ambuscade. It will destroy the state governments, and swallow the liberties of the people, without giving previous notice. If gentlemen are willing to run the hazard, let them run it; but I shall exculpate myself by my opposition and monitory warnings within these walls. But then comes paper money. We are at peace on this subject. Though this is a thing which that mighty federal Convention had no business with, yet I acknowledge that paper money would be the bane of this country. I detest it. Nothing can justify a people in resorting to it but extreme necessity. It is at rest, however, in this commonwealth. It is no longer solicited or advocated.

Sir, I ask you, and every other gentleman who hears me, if he can retain his indignation at a system which takes from the state legislatures the care and preservation of the interest of the people. One hundred and eighty representatives, the choice of the people of Virginia, cannot be trusted with their interests. They are a mobbish, suspected *herd*. This country has not virtue enough to manage its own internal interests. These must be referred to the chosen ten. If we cannot be trusted with the private contracts of the citizens, we must be depraved indeed. If he can prove that, by one uniform system of abandoned principles, the legislature has betrayed the rights of the people, then let us seek another shelter. So degrading an indignity, so flagrant an outrage on the states, so vile a suspicion, is humiliating to my mind, and many others.

Will the adoption of this new plan pay our debts? This, sir, is a plain question. It is inferred that our grievances are to be redressed, and the evils of the existing system to

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be removed, by the new Constitution. Let me inform the honorable gentleman that no nation ever paid its debts by a change of government, without the aid of industry. You never will pay your debts but by a radical change of domestic economy. At present you buy too much, and make too little, to pay. Will this new system promote manufactures, industry, and frugality? If, instead of this, your hopes and designs will be disappointed, you relinquish a great deal, and hazard indefinitely more, for nothing. Will it enhance the value of your lands? Will it lessen your burdens? Will your looms and wheels go to work by the act of adoption? If it will, in its consequence, produce these things, it will consequently produce a reform, and enable you to pay your debts. Gentlemen must prove it. I am a skeptic, an infidel, on this point. I cannot conceive that it will have these happy consequences. I cannot confide in assertions and allegations. The evils that attend us lie in extravagance and want of industry, and can only be removed by assiduity and economy. Perhaps we shall be told by gentlemen that these things will happen, because the administration is to be taken from us, and placed in the hands of the few, who will pay greater attention, and be more studiously careful than we can be supposed to be.

With respect to the economical operation of the new government, I will only remark, that the national expenses will be increased; if not doubled, it will approach it very nearly. I might, without incurring the imputation of illiberality or extravagance, say that the expense will be multiplied tenfold. I might tell you of a numerous standing army, a great, powerful navy, a long and rapacious train of officers and dependants, independent of the President, senators, and representatives, whose compensations are without limitation. How are our debts to be discharged unless the taxes are increased, when the expenses of the government are so greatly augmented? The defects of this system are so numerous and palpable, and so many states object to it, that no union can be expected, unless it be amended. Let us take a review of the facts. New Hampshire and Rhode Island have rejected it. They have refused to become federal. New York and North Carolina are reported to be strongly against it. From high authority, give me leave to tell that New York is in high opposition. Will any gentleman say that

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North Carolina is not against it? They may say so; but I say that the adoption of it in those two states amounts to entire uncertainty. The system must be amended before these four states will accede to it; besides, there are several other states which are dissatisfied, and wish alterations. Massachusetts has, in decided terms, proposed amendments; but, by her previous ratification, has put the cart before the horse. Maryland instituted a committee to propose amendments. It then appears that two states have actually refused to adopt; two of those who have adopted have a desire of amending; and there is a probability of its being rejected by New York and North Carolina. The other states have acceded without proposing amendments. With respect to them, local circumstances have, in my judgment, operated to produce its unconditional, instantaneous adoption. The locality of the seat of government, ten miles square, and the seat of justice, with all their concomitant emoluments, operated so powerfully with the first adopting state, that it was adopted without taking time to reflect. We are told that numerous advantages will result, from the concentration of the wealth and grandeur of the United States in one happy spot, to those who will reside in or near it. Prospects of profits and emoluments have a powerful influence on the human mind. We, sir, have no such projects as that of a grand seat of government for thirteen states, and perhaps for one hundred states hereafter. Connecticut and New Jersey have their localities also. New York lies between them. They have no ports, and are not importing states. New York is an importing state, and, taking advantage of its situation, makes them pay duties for all the articles of their consumption: thus these two states, being obliged to import all they want through the medium of New York, pay the particular taxes of that state. I know the force and effect of reasoning of this sort, by experience. When the impost was proposed, some years ago, those states which were not importing states readily agreed to concede to Congress the power of laying an impost on all goods imported, for the use of the Continental treasury. Connecticut and New Jersey, therefore, are influenced by advantages of trade in their adoption. The amount of all imposts is to go into one common treasury. This favors adoption by the non-importing states, as they participate in the profits which were before exclusively enjoyed by the importing states.

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Notwithstanding this obvious advantage to Connecticut, there is a formidable minority there against it. After taking this general view of American affairs, as respecting federalism, will the honorable gentleman tell me that he can expect union in America? When so many states are pointedly against it; when two adopting states have pointed out, in express terms, their dissatisfaction as it stands; and when there is so respectable a body of men discontented in every state, — can the honorable gentleman promise himself harmony, of which he is so fond? If he can, I cannot. To me it appears unequivocally clear that we shall not have that harmony. If it appears to the other states that our aversion is founded on just grounds, will they not be willing to indulge us? If disunion will really result from Virginia's proposing amendments, will they not wish the reëstablishment of the union, and admit us, if not on such terms as we prescribe, yet on advantageous terms? Is not union as essential to their happiness as to ours? Sir, without a radical alteration, the states will never be embraced in one federal pale. If you attempt to force it down men's throats, and call it union, dreadful consequences must follow. He has said a great deal of disunion, and the dangers that are to arise from it. When we are on the subject of disunion and dangers, let me ask, how will his present doctrine hold with what has happened? Is it consistent with that noble and disinterested conduct which he displayed on a former occasion? Did he not tell us that he withheld his signature? Where, then, were the dangers which now appear to him so formidable? He saw all America eagerly confiding that the result of their deliberations would remove their distresses. He saw all America acting under the impulses of hope, expectation, and anxiety, arising from their situation, and their partiality for the members of that Convention; yet his enlightened mind, knowing that system to be defective, magnanimously and nobly refused its approbation. He was not led by the illumined, the illustrious few. He was actuated by the dictates of his own judgment; and a better judgment than I can form. He did not stand out of the way of information. He must have been possessed of every intelligence. What alteration has a few months brought about? The eternal difference between right and wrong does not fluctuate. It is immutable. I ask this question as

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a public man, and out of no particular view. I wish, as such, to consult every source of information, to form my judgment on so awful a question. I had the highest respect for the honorable gentleman's abilities. I considered his opinion as a great authority. He taught me, sir, in despite of the approbation of that great federal Convention, to doubt of the propriety of that system. When I found my honorable friend in the number of those who doubted, I began to doubt also. I coincided with him in opinion. I shall be a stanch and faithful disciple of his. I applaud that magnanimity which led him to withhold his signature. If he thinks now differently, he is as free as I am. Such is my situation, that, as a poor individual, I look for information every where.

This government is so new, it wants a name. I wish its other novelties were as harmless as this. He told us we had an American dictator in the year 1781. We never had an American President. In making a dictator, we followed the example of the most glorious, magnanimous, and skilful nations. In great dangers, this power has been given. Rome had furnished us with an illustrious example. America found a person for that trust: she looked to Virginia for him. We gave a dictatorial power to hands that used it gloriously; and which were rendered more glorious by surrendering it up. Where is there a breed of such dictators? Shall we find a set of American Presidents of such a breed? Will the American President come and lay prostrate at the feet of Congress his laurels? I fear there are few men who can be trusted on that head. The glorious republic of Holland has erected monuments of her warlike intrepidity and valor; yet she is now totally ruined by a stadtholder, a Dutch president.

The destructive wars into which that nation has been plunged, have since involved her in ambition. The glorious triumphs of Blenheim and Ramillies were not so conformable to the genius, nor so much to the true interest of the republic, as those numerous and useful canals, and dikes, and other objects, at which ambition spurns. That republic has, however, by the industry of its inhabitants, and policy of its magistrates, suppressed the ill effects of ambition. Notwithstanding two of their provinces have paid nothing, yet I hope the example of Holland will tell us that we can live

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happily without changing our present despised government Cannot people be as happy under a mild as under an energetic government? Cannot content and felicity be enjoyed in republics as well as in monarchies, because there are whips, chains, and scourges, used in the latter? If I am not as rich as my neighbor, if I give my mite — my all — republican forbearance will say that it is sufficient. So said the honest confederates of Holland — You are poor, we are rich. We will go on, and do better than be under an oppressive government. Far better will it be for us to continue as we are, than to go under that tight, energetic government.

I am persuaded of what the honorable gentleman says, that separate confederacies will ruin us. In my judgment, they are evils never to be thought of till a people are driven by necessity. When he asks my opinion of consolidation, of one power to reign over America with a strong hand, I will tell him I am persuaded of the rectitude of my honorable friend's opinion, (Mr. Mason,) that one government cannot reign over so extensive a country as this is, without absolute despotism. Compared to such a consolidation, small confederacies are little evils; though they ought to be recurred to but in case of necessity. Virginia and North Carolina are despised. They could exist separated from the rest of America. Maryland and Vermont were not overrun when out of the confederacy. Though it is not a desirable object, yet I trust that, on examination, it will be found that Virginia and North Carolina would not be swallowed up, in case it was necessary for them to be joined together.

When we come to the spirit of domestic peace, the humble genius of Virginia has formed a government suitable to the genius of her people. I believe the hands that formed the American Constitution triumph in the experiment. It proves that the man who formed it, and perhaps by accident, did what design could not do in other parts of the world. After all your reforms in government, unless you consult the genius of its inhabitants, you will never succeed; your system can have no duration. Let me appeal to the candor of the committee, if the want of money be not the source of all our misfortunes. We cannot be blamed for not making dollars. This want of money cannot be supplied by changes in government. The only possible remedy, as I have before asserted, is industry, aided by economy. Compare the

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genius of the people with the government of this country. Let me remark, that it stood the severest conflict, during the war, to which ever human virtue has been called. I call upon every gentleman here to declare, whether the king of England had any subjects so attached to his family and government, so loyal, as we were? But the genius of Virginia called on us for liberty — called us from those beloved endearments, which, from long habits, we were taught to love and revere. We entertained, from our earliest infancy, the most sincere regard and reverence for the mother country. Our partiality extended to a predilection for her customs, habits, manners, and laws. Thus inclined, when the deprivation of our liberty was attempted, what did we do? What did the genius of Virginia tell us? *Sell all, and purchase liberty!* — This was a severe conflict. Republican maxims were then esteemed. Those maxims, and the genius of Virginia, landed you safe on the shore of freedom.

On this awful occasion, did you want a federal government? Did federal ideas possess your minds? Did federal ideas lead you to the most splendid victories? I must again repeat the favorite idea, that the genius of Virginia did, and will again, lead us to happiness. To obtain the most splendid prize, you did not consolidate. You accomplished the most glorious ends by the assistance of the genius of your country. Men were then taught by that genius, that they were fighting for what was most dear to them. View the most affectionate father, the most tender mother, operated on by liberty, nobly stimulating their sons — their dearest sons — sometimes their only son — to advance to the defence of their country. We have seen sons of Cincinnatus, without splendid magnificence or parade, going, with the genius of their great progenitor, Cincinnatus, to the plough; men who served their country without ruining it — men who had served it to the destruction of their private patrimonies — their country owing them amazing amounts, for the payment of which no adequate provision was then made. We have seen such men throw prostrate their arms at your feet. They did not call for those emoluments which ambition presents to some imaginations. The soldiers, who were able to command every thing, instead of trampling on those laws which they were instituted to defend, most strictly obeyed them. The hands of justice have not been laid on a single American soldier.

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Bring them into contrast with Europeans. You will see an astonishing superiority over the latter. There has been a strict subordination to the laws. The honorable gentleman's office gave him an opportunity of viewing if the laws were administered so as to prevent riots, routs, and unlawful assemblies. From his then situation, he could have furnished us with the instances in which licentiousness trampled on the laws. Among all our troubles, we have paid almost to the last shilling for the sake of justice; we have paid as well as any state: I will not say better. To support the general government and our own legislature — to pay the interest of the public debts and defray contingencies — we have been heavily taxed. To add to these things, the distresses produced by paper money, and by tobacco contracts, were sufficient to render any people discontented. These, sir, were great temptations; but in the most severe conflict of misfortunes, this code of laws, this genius of Virginia — call it what you will — triumphed over every thing.

Why did it please the gentleman (Mr. Corbin) to bestow such epithets on our country? Have the worms taken possession of the wood, that our strong vessel — our political vessel — has sprung a leak? He may know better than I, but I consider such epithets to be the most illiberal and unwarrantable aspersions on our laws. The system of laws under which we have lived has been tried and found to suit our genius. I trust we shall not change this happy system. I cannot so easily take leave of an old friend. Till I see him following after and pursuing other objects, which can pervert the great objects of human legislation, pardon me if I withhold my assent.

Some here speak of the difficulty in forming a new code of laws. Young as we were, it was not wonderful if there was a difficulty in forming and assimilating one system of laws. I shall be obliged to the gentleman if he would point out those glaring, those great faults. The efforts of assimilating our laws to our genius have not been found altogether vain. I shall pass over some other circumstances which I intended to mention, and endeavor to come to the capital objection which my honorable friend made. My worthy friend said that a republican form of government would not suit a very extensive country; but that, if a government were judiciously organized, and limits prescribed to it, an attention

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to these principles might render it possible for it to exist in an extensive territory. Whoever will be bold to say that a continent can be governed by that system, contradicts all the experience of the world. It is a work too great for human wisdom. Let me call for an example. Experience has been called the best teacher. I call for an example of a great extent of country, governed by one government, or Congress, call it what you will. I tell him that a government may be trimmed up according to gentlemen's fancy, but it never can operate; it would be but very short-lived. However disagreeable it may be to lengthen my objections, I cannot help taking notice of what the honorable gentleman said. To me it appears that there is no check in that government. The President, senators, and representatives, all, immediately or mediately, are the choice of the people. Tell me not of checks on paper; but tell me of checks founded on self-love. The English government is founded on self-love. This powerful, irresistible stimulus of self-love has saved that government.

It has interposed that hereditary nobility between the king and commons. If the host of lords assist or permit the king to overturn the liberties of the people, the same tyranny will destroy them; they will therefore keep the balance in the democratic branch. Suppose they see the commons encroach upon the king: self-love, that great energetic check, will call upon them to interpose; for, if the king be destroyed, their destruction must speedily follow. Here is a consideration, which prevails, in my mind, to pronounce the British government superior, in this respect, to any government that ever was in any country. Compare this with your congressional checks. I beseech gentlemen to consider whether they can say, when trusting power, that a mere patriotic profession will be equally operative and efficacious as the check of self-love. In considering the experience of ages, is it not seen that fair, disinterested patriotism, and professions of attachment to rectitude, have never been solely trusted to by an enlightened, free people? If you depend on your President's and senators' patriotism, you are gone. Have you a resting-place like the British government? Where is the rock of your salvation? The real rock of political salvation is self-love, perpetuated from age to age in every human breast, and manifested in every action. If

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they can stand the temptations of human nature, you are safe. If you have a good President, senators, and representatives, there is no danger. But can this be expected from human nature? Without real checks, it will not suffice that some of them are good. A good President, or senator, or representative, will have a natural weakness. Virtue will slumber.

The wicked will be continually watching: consequently you will be undone. Where are your checks? You have no hereditary nobility — an order of men to whom human eyes can be cast up for relief; for, says the Constitution, there is no title of nobility to be granted — which, by the by, would not have been so dangerous as the perilous cession of powers contained in this paper; because, as Montesquieu says, when you give titles of nobility, you know what you give; but when you give power, you know not what you give. If you say that, out of this depraved mass, you can collect luminous characters, it will not avail, unless this luminous breed will be propagated from generation to generation, and even then, if the number of vicious characters will preponderate, you are undone.

And that this will certainly be the case is, to my mind, perfectly clear. In the British government there are real balances and checks: in this system there are only ideal balances. Till I am convinced that there are actual efficient checks, I will not give my assent to its establishment. The President and senators have nothing to lose. They have not that interest in the preservation of the government that the king and lords have in England. They will, therefore, be regardless of the interests of the people. The Constitution will be as safe with one body as with two. It will answer every purpose of human legislation. How was the constitution of England when only the commons had the power? I need not remark, that it was the most unfortunate era when that country returned to king, lords, and commons, without sufficient responsibility in the king. When the commons of England, in the manly language which became freemen, said to their king, *You are our servant*, then the temple of liberty was complete. From that noble source have we derived our liberty: that spirit of patriotic attachment to one's country, that zeal for liberty, and that enmity to tyranny, which signalized the then champions of liberty

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we inherit from our British ancestors. And I am free to own that, if you cannot love a republican government, you may love the British monarchy; for, although the king is not sufficiently responsible, the responsibility of his agents, and the efficient checks interposed by the British Constitution, render it less dangerous than other monarchies, or oppressive tyrannical aristocracies. What are the checks of exposing accounts? The checks upon paper are inefficient and nugatory. Can you search your President's closet? Is this a real check? We ought to be exceedingly cautious in giving up this life, this soul, of money, this power of taxation, to Congress. What powerful check is there here to prevent the most extravagant and profligate squandering of the public money? What security have we in money matters? Inquiry is precluded by this Constitution. I never wish to see Congress supplicate the states. But it is more abhorrent to my mind to give them an unlimited and unbounded command over our souls, our lives, our purses, without any check or restraint. How are you to keep inquiry alive? How discover their conduct? We are told, by that paper, that a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. Here is a beautiful check! What time? Here is the utmost latitude left. If those who are in Congress please to put that construction upon it, the words of the Constitution will be satisfied by publishing those accounts once in one hundred years. They may publish or not, as they please. Is this like the present despised system, whereby the accounts are to be published monthly?

I come now to speak something of requisitions, which the honorable gentleman thought so truly contemptible and disgraceful. That incorrigible gentleman, being a child of the revolution, must recollect with gratitude the glorious effects of requisitions. It is an idea that must be grateful to every American. An English army was sent to compel us to pay money contrary to our consent — to force us, by arbitrary and tyrannical coercion, to satisfy their unbounded demands. We wished to pay with our own consent. Rather than pay against our consent, we engaged in that bloody contest which terminated so gloriously. By requisitions we pay with our own consent; by the means we have triumphed in the most arduous struggle that ever tried the virtue of man.

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We fought then for what we are contending for now — to prevent an arbitrary deprivation of our property, contrary to our consent and inclination. I shall be told in this place that those who are to tax us are our representatives. To this I answer, that there is no real check to prevent their ruining us. There is no actual responsibility. The only semblance of a check is the negative power of not reëlecting them. This, sir, is but a feeble barrier, when their personal interest, their ambition and avarice, come to be put in contrast with the happiness of the people. All checks founded on any thing but self-love will not avail. The Constitution reflects in the most degrading and mortifying manner on the virtue, integrity, and wisdom of the state legislatures; it presupposes that the chosen few who go to Congress will have more upright hearts, and more enlightened minds, than those who are members of the individual legislatures. To suppose that ten gentlemen shall have more real, substantial merit than one hundred and seventy, is humiliating to the last degree. If, sir, the diminution of numbers be an augmentation of merit, perfection must centre in one. If you have the faculty of discerning spirits, it is better to point out at once the man who has the most illumined qualities. If ten men be better than one hundred and seventy, it follows of necessity that one is better than ten — the choice is more refined.

Such is the danger of the abuse of implied power, that it would be safer at once to have seven representatives, the number to which we are now entitled, than depend on the uncertain and ambiguous language of that paper. The number may be lessened, instead of being increased; and yet, by argumentative, constructive, implied power, the proportion of taxes may continue the same, or be increased. Nothing is more perilous than constructive power, which gentlemen are so willing to trust their happiness to.

If sheriffs prove now an overmatch for our legislature, if their ingenuity has eluded the vigilance of our laws, how will the matter be amended when they come clothed with federal authority? A strenuous argument offered by gentlemen is, that the same sheriffs may collect for the Continental and state treasuries. I have before shown that this must have an inevitable tendency to give a decided preference to the federal treasury in the actual collections, and to throw all deficiencies on the state. This imaginary remedy for the evil of

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congressional taxation will have another oppressive operation. The sheriff comes to-day as a state collector. Next day he is federal. How are you to fix him? How will it be possible to discriminate oppressions committed in one capacity from those perpetrated in the other? Will not this ingenuity perplex the simple and honest planter? This will at least involve in difficulties those who are unacquainted with legal ingenuity. When you fix him, where are you to punish him? for I suppose they will not stay in our courts: they must go to the federal court; for, if I understand that paper right, all controversies arising under that Constitution, or under the laws made in pursuance thereof, are to be tried in that court. When gentlemen told us that this part deserved the least exception, I was in hopes they would prove that there was plausibility in their suggestions, and that oppression would probably not follow. Are we not told that it shall be treason to levy war against the United States? Suppose an insult offered to the federal laws at an immense distance from Philadelphia,—will this be deemed treason? And shall a man be dragged many hundred miles, to be tried as a criminal, for having, perhaps justifiably, resisted an unwarrantable attack upon his person or property? I am not well acquainted with federal jurisprudence; but it appears to me that these oppressions must result from this part of the plan. It is at least doubtful; and where there is even a possibility of such evils, they ought to be guarded against.

There are to be a number of places fitted out for arsenals and dockyards in the different states. Unless you sell to Congress such places as are proper for these, within your state, you will not be consistent after adoption: it results, therefore, clearly, that you are to give into their hands all such places as are fit for strongholds. When you have these fortifications and garrisons within your state, your legislature will have no power over them, though they see the most dangerous insults offered to the people daily. They are also to have magazines in each state. These depositories for arms, though within the state, will be free from the control of its legislature. Are we at last brought to such an humiliating and debasing degradation, that we cannot be trusted with arms for our own defence? Where is the difference between having our arms in our own possession and under our own direction, and having them under the management of Con-

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gress? If our defence be the *real* object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands? If our legislature be unworthy of legislating for every foot in this state, they are unworthy of saying another word.

The clause which says that Congress shall "provide for arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers," seemed to put the states in the power of Congress. I wished to be informed, if Congress neglected to discipline them, whether the states were not precluded from doing it. Not being favored with a particular answer, I am confirmed in my opinion, that the states have not the power of disciplining them, without recurring to the doctrine of constructive implied powers. If, by implication, the states may discipline them, by implication, also, Congress may officer them; because, in a partition of power, each has a right to come in for part; and because implication is to operate in favor of Congress on all occasions, where their object is the extension of power, as well as in favor of the states. We have not one fourth of the arms that would be sufficient to defend ourselves. The power of arming the militia, and the means of purchasing arms, are taken from the states by the paramount powers of Congress. If Congress will not arm them, they will not be armed at all.

There have been no instances shown of a voluntary cession of power, sufficient to induce me to grant the most dangerous power; a possibility of their future relinquishment will not persuade me to yield such powers.

Congress, by the power of taxation, by that of raising an army, and by their control over the militia, have the sword in one hand, and the purse in the other. Shall we be safe without either? Congress have an unlimited power over both: they are entirely given up by us. Let him candidly tell me, where and when did freedom exist, when the sword and purse were given up from the people? Unless a miracle in human affairs interposed, no nation ever retained its liberty after the loss of the sword and purse. Can you prove, by any argumentative deduction, that it is possible to be safe without retaining one of these? If you give them up, you are gone. Give us at least a plausible apology why

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Congress should keep their proceedings in secret. They have the power of keeping them secret as long as they please, for the provision for a periodical publication is too inexplicit and ambiguous to avail any thing. The expression *from time to time*, as I have more than once observed, admits of any extension. They may carry on the most wicked and pernicious of schemes under the dark veil of secrecy. The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them. The most iniquitous plots may be carried on against their liberty and happiness. I am not an advocate for divulging indiscriminately all the operations of government, though the practice of our ancestors, in some degree, justifies it. Such transactions as relate to military operations or affairs of great consequence, the immediate promulgation of which might defeat the interests of the community, I would not wish to be published, till the end which required their secrecy should have been effected. But to cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man, and every friend to his country.

[Mr. Henry then, in a very animated manner, expatiated on the evil and pernicious tendency of keeping secret the common proceedings of government, and said that it was contrary to the practice of other free nations. The people of England, he asserted, had gained immortal honor by the manly boldness wherewith they divulged to all the world their political disquisitions and operations, and that such a conduct inspired other nations with respect. He illustrated his arguments by several quotations.]

He then continued: I appeal to this Convention if it would not be better for America to take off the veil of secrecy. *Look at us — hear our transactions!* If this had been the language of the federal Convention, what would have been the result? Such a constitution would not have come out to your utter astonishment, conceding such dangerous powers, and recommending secrecy in the future transactions of government. I believe it would have given more general satisfaction, if the proceedings of that Convention had not been concealed from the public eye. This Constitution authorizes the same conduct. There is not an English feature in it. The transactions of Congress may be concealed a century from the public, consistently with the Constitution. This, sir, is a laudable imitation of the transactions of the

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Spanish treaty. We have not forgotten with what a thick veil of secrecy those transactions were covered.

We are told that this government, collectively taken, is without an example; that it is national in this part, and federal in that part, &c. We may be amused, if we please, by a treatise of political anatomy. In the brain it is national; the stamina are federal; some limbs are federal, others national. The senators are voted for by the state legislatures; so far it is federal. Individuals choose the members of the first branch; here it is national. It is federal in conferring general powers, but national in retaining them. It is not to be supported by the states; the pockets of individuals are to be searched for its maintenance. What signifies it to me that you have the most curious anatomical description of it in its creation? To all the common purposes of legislation, it is a great consolidation of government.

You are not to have the right to legislate in any but trivial cases; you are not to touch private contracts; you are not to have the right of having arms in your own defence; you cannot be trusted with dealing out justice between man and man. What shall the states have to do? Take care of the poor, repair and make highways, erect bridges, and so on, and so on? Abolish the state legislatures at once. What purposes should they be continued for? Our legislature will indeed be a ludicrous spectacle — one hundred and eighty men marching in solemn, farcical procession, exhibiting a mournful proof of the lost liberty of their country, without the power of restoring it. But, sir, we have the consolation that it is a mixed government; that is, it may work sorely on your neck, but you will have some comfort by saying, that it was a federal government in its origin.

I beg gentlemen to consider: lay aside your prejudices. Is this a federal government? Is it not a consolidated government for almost every purpose? Is the government of Virginia a state government after this government is adopted? I grant that it is a republican government, but for what purposes? For such trivial domestic considerations as render it unworthy the name of a legislature. I shall take leave of this political anatomy, by observing that it is the most extraordinary that ever entered into the imagination of man. If our political diseases demand a cure, this is an unheard-of medicine. The honorable member, I am convinced

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wanted a name for it. Were your health in danger, would you take new medicine? I need not make use of these exclamations: for every member in this committee must be alarmed at making new and unusual experiments in government. Let us have national credit and a national treasury in case of war. You never can want national resources in time of war, if the war be a national one — if it be necessary, and this necessity be obvious to the meanest capacity. The utmost exertions will be used by the people of America in that case. A republic has this advantage over a monarchy, that its wars are generally founded on more just grounds. A republic can never enter into a war, unless it be a national war — unless it be approved of, or desired, by the whole community. Did ever a republic fail to use the utmost resources of the community when war was necessary? I call for an example. I call also for an example where a republic has been engaged in a war contrary to the wishes of its people. There are thousands of examples where the ambition of its prince has precipitated a nation into the most destructive war. No nation ever withheld power when its object was just and right. I will hazard an observation: I find fault with the paper before you, because the same power that declares war has the power to carry it on. Is it so in England? The king declares war; the House of Commons gives the means of carrying it on. This is a strong check on the king. He will enter into no war that is unnecessary; for the commons, having the power of withholding the means, will exercise that power, unless the object of the war be for the interest of the nation. How is it here? The Congress can both declare war and carry it on, and levy your money, as long as you have a shilling to pay.

I shall now speak a little of the colonial confederacy which was proposed at Albany. Massachusetts did not give her consent to the project at Albany, so as to consolidate with the other colonies. Had there been a consolidation at Albany, where would have been their charter? Would that confederacy have preserved their charter from Britain? The strength and energy of the then designed government would have crushed American opposition.

The American revolution took its origin from the comparative weakness of the British government — not being concentrated in one point. A concentration of the strength and

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interest of the British government, in one point, would have rendered opposition to its tyrannies fruitless. For want of that consolidation do we now enjoy liberty, and the privilege of debating at this moment. I am pleased with the colonial establishment. The example which the honorable member has produced, to persuade us to depart from our present confederacy, rivets me to my former opinion, and convinces me that consolidation must end in the destruction of our liberties.

The honorable gentleman has told us of our ingratitude to France. She does not intend to take payment by force. Ingratitude shall not be laid to my charge. I wish to see the friendship between this country and that magnanimous ally perpetuated. Requisitions will enable us to pay the debt we owe to France and other countries. She does not desire us to go from our beloved republican government. The change is inconsistent with our engagements with those nations. It is cried out that those in opposition wish disunion. This is not true. They are the most strenuous enemies to it. This government will clearly operate disunion. If it be heard, on the other side of the Atlantic, that you are going to disunite and dissolve the confederacy, what says France? Will she be indifferent to an event that will so radically affect her treaties with us? Our treaty with her is founded on the federation — we are bound to her as thirteen states confederated. What will become of the treaty? It is said that treaties will be on a better footing. How so? Will the President, Senate, and House of Representatives, be parties to them? I cannot conceive how the treaties can be as binding if the confederacy is dissolved as they are now. Those nations will not continue their friendship then; they will become our enemies. I look on the treaties as the greatest pillars of safety. If the house of Bourbon keeps us, we are safe. Dissolve that confederacy — who has you? The British. Federalism will not protect you from the British. Is a connection with that country more desirable? I was amazed when gentlemen forgot the friends of America. I hope that this dangerous change will not be effected. It is safe for the French and Spaniards that we should continue to be thirteen states; but it is not so that we should be consolidated into one government. They have settlements in America: will they like schemes of pop

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ular ambition? Will they not have some serious reflections? You may tell them you have not changed your situation; but they will not believe you. If there be a real check intended to be left on Congress, it must be left in the state governments. There will be some check, as long as the judges are incorrupt. As long as they are upright, you may preserve your liberty. But what will the judges determine when the state and federal authority come to be contrasted? Will your liberty then be secure, when the congressional laws are declared paramount to the laws of your state, and the judges are sworn to support them?

I am constrained to make a few remarks on the absurdity of adopting this system, and relying on the chance of getting it amended afterwards. When it is confessed to be replete with defects, is it not offering to insult your understandings to attempt to reason you out of the propriety of rejecting it till it be amended? Does it not insult your judgments to tell you, Adopt first, and then amend! Is your rage for novelty so great, that you are first to sign and seal, and then to retract? Is it possible to conceive a greater solecism? I am at a loss what to say. You agree to bind yourselves hand and foot — for the sake of what? Of being unbound. You go into a dungeon — for what? To get out. Is there no danger, when you go in, that the bolts of federal authority shall shut you in? Human nature never will part from power. Look for an example of a voluntary relinquishment of power, from one end of the globe to another: you will find none. Nine tenths of our fellow-men have been, and are now, depressed by the most intolerable slavery, in the different parts of the world, because the strong hand of power has bolted them in the dungeon of despotism.

Review the present situation of the nations of Europe, which is pretended to be the freest quarter of the globe. Cast your eyes on the countries called free there. Look at the country from which we are descended, I beseech you; and although we are separated by everlasting, insuperable partitions, yet there are some virtuous people there, who are friends to human nature and liberty. Look at Britain: see there the bolts and bars of power: see bribery and corruption defiling the fairest fabric that ever human nature reared! Can a gentleman who is an Englishman, or who is ac-

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quainted with the English history, desire to prove these evils? See the efforts of a man descended from a friend of America — see the efforts of that man, assisted even by the king, to make reforms. But you find the faults too strong to be amended. Nothing but bloody war can alter them. See Ireland! That country groaned, from century to century, without getting their government amended. Previous adoption was the fashion there. They sent for amendments *from time to time*, but never obtained them, though pressed by the severest oppression, till eighty thousand volunteers demanded them, sword in hand — till the power of Britain was prostrate; when the American resistance was crowned with success. Shall we do so? If you judge by the experience of Ireland, you must obtain the amendments as early as possible. But, I ask you again, where is the example that a government was amended by those who instituted it? Where is the instance of the errors of a government rectified by those who adopted them?

I shall make a few observations to prove that the power over elections, which is given to Congress, is contrived by the federal government, that the people may be deprived of their proper influence in the government, by destroying the force and effect of their suffrages. Congress is to have a discretionary control over the time, place, and manner of elections. The representatives are to be elected, consequently, when and where they please. As to the time and place, gentlemen have attempted to obviate the objection by saying, that the time is to happen once in two years, and that the place is to be within a particular district, or in the respective counties. But how will they obviate the danger of referring the *manner* of election to Congress? Those illumined genii may see that this may not endanger the rights of the people; but in my unenlightened understanding, it appears plain and clear that it will impair the popular weight in the government. Look at the Roman history. They had two ways of voting — the one by tribes, and the other by centuries. By the former, numbers prevailed; in the latter, riches preponderated. According to the mode prescribed, Congress may tell you that they have a right to make the vote of one gentleman go as far as the votes of a hundred poor men. The power over the manner admits of the most dangerous latitude. They may modify it as they

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please. They may regulate the number of votes by the quantity of property, without involving any repugnancy to the Constitution. I should not have thought of this trick or contrivance, had I not seen how the public liberty of Rome was trifled with by the mode of voting by centuries, whereby one rich man had as many votes as a multitude of poor men. The plebeians were trampled on till they resisted. The patricians trampled on the liberties of the plebeians till the latter had the spirit to assert their right to freedom and equality. The result of the American mode of election may be similar. Perhaps I may be told that I have gone through the regions of fancy — that I deal in noisy exclamations and mighty professions of patriotism. Gentlemen may retain their opinions; but I look on that paper as the most fatal plan that could possibly be conceived to enslave a free people. If such be your rage for novelty, take it, and welcome; but you never shall have my consent. My sentiments may appear extravagant, but I can tell you that a number of my fellow-citizens have kindred sentiments; and I am anxious, if my country should come into the hands of tyranny, to exculpate myself from being in any degree the cause, and to exert my faculties to the utmost to extricate her. Whether I am gratified or not in my beloved form of government, I consider that the more she has plunged into distress, the more it is my duty to relieve her. Whatever may be the result, I shall wait with patience till the day may come when an opportunity shall offer to exert myself in her cause.

But I should be led to take that man for a lunatic, who should tell me to run into the adoption of a government avowedly defective, in hopes of having it amended afterwards. Were I about to give away the meanest particle of my own property, I should act with more prudence and discretion. My anxiety and fears are great lest America, by the adoption of this system, should be cast into a fathomless bottom. — Mr. Henry then concluded that, as he had not gone through all he intended to say, he hoped he would be indulged another time.

Mr. LEE, (of Westmoreland.) Mr. Chairman, when I spoke before, and called on the honorable gentleman (Mr. Henry) to come forward and give his reasons for his opposition in a systematic manner, I did it from love of order,

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and respect for the character of the honorable gentleman; having no other motives but the good of my country. As he seemed so solicitous that the truth should be brought before the committee on this occasion, I thought I could not do more properly than to call on him for his reasons for standing forth the champion of opposition. I took the liberty to add, that the subject belonged to the judgments of the gentlemen of the committee, and not to their passions. I am obliged to him for his politeness in this committee; but as the honorable gentleman seems to have discarded, in a great measure, solid argument and strong reasoning, and has established a new system of throwing those bolts which he has so peculiar a dexterity at discharging, I trust I shall not incur the displeasure of the committee by answering the honorable gentleman in the desultory manner in which he has treated the subject. I shall touch a few of those *luminous* points which he has entertained us with. He told us, the other day, that the enemies of the Constitution were firm supporters of liberty, and implied that its friends were not republicans. This may have been calculated to make impressions disadvantageous to those gentlemen who favor this new plan of government; and impressions of this kind are not easily eradicated. I conceive that I may say with truth that the friends of that paper are true republicans, and by no means less attached to liberty than those who oppose it. The verity of this does not depend on my assertion, but on the lives and well-known characters of different gentlemen in different parts of the continent. I trust the friends of that government will oppose the efforts of despotism as firmly as its opposers.

Much is said by gentlemen out of doors They ought to urge all their objections here; I hope they will offer them here; I shall confine myself to what is said here. In all his rage for democracy, and zeal for the rights of the people, how often does he express his admiration of that king and Parliament over the Atlantic! But we republicans are contemned and despised. Here, sir, I conceive that *implication* might operate against himself.

He tells us that he is a stanch republican, and that he adores liberty. I believe him; and when I do so, I wonder that he should say that a kingly government is superior to that system which we admire. He tells you that it cher-

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ishes a standing army, and that militia alone ought to be depended upon for the defence of every free country. There is not a gentleman in this house, (not even the gentleman himself,) there is no man without these walls, who admires the militia more than I do. Without vanity, I may say I have had different experience of their service from that of the honorable gentleman. It was my fortune to be a soldier of my country. In the discharge of my duty, I knew the worth of militia. I have seen them perform feats that would do honor to the first veterans, and submitting to what would daunt German soldiers. I saw what the honorable gentleman did not see — our men fighting with the troops of that king whom he so much admires. I have seen proofs of the wisdom of that paper on your table. I have seen incontrovertible evidence that militia cannot always be relied upon. I could enumerate many instances, but one will suffice. Let the gentleman recollect the action of Guildford. The American regular troops behaved there with the most gallant intrepidity. What did the militia do? The greatest number of them fled. Their abandonment of the regulars occasioned the loss of the field. Had the line been supported that day, Cornwallis, instead of surrendering at Yorktown, would have laid down his arms at Guildford.

This plan provides for the public defence as it ought to do. Regulars are to be employed when necessary, and the service of the militia will always be made use of. This, sir, will promote agricultural industry and skill, and military discipline and science.

I cannot understand the implication of the honorable gentleman, that, because Congress may arm the militia, the states cannot do it: nor do I understand the reverse of the proposition. The states are, by no part of the plan before you, precluded from arming and disciplining the militia, should Congress neglect it. In the course of Saturday, and some previous harangues, from the terms in which some of the Northern States were spoken of, one would have thought that the love of an American was in some degree criminal, as being incompatible with a proper degree of affection for a Virginian. The people of America, sir, are one people. I love the people of the north, not because they have adopted the Constitution, but because I fought with them as my countrymen, and because I consider them as such. Does it

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follow from hence that I have forgotten my attachment to my native state? In all local matters I shall be a Virginian: in those of a general nature, I shall not forget that I am an American.

He has called on the house to expose the catalogue of evils which would justify this change of the government. I appeal to gentlemen's candor — has not a most mournful detail been unfolded here?

In the course of the debates, I have heard from those gentlemen who have advocated the new system, an enumeration which drew groans from my very soul, but which did not draw one sigh from the honorable gentleman over the way. Permit me to ask if there be an evil which can visit mankind so injurious and oppressive, in its consequence and operation, as a tender-law? If Pandora's box were on one side of me, and a tender-law on the other, I would rather submit to the box than to the tender-law. The principle, evil as it is, is not so base and pernicious as the application. It breaks down the moral character of your people, robs the widow of her maintenance, and defrauds the orphan of his food. The widow and orphan are reduced to misery, by receiving, in a depreciated value, money which the husband and father had lent out of friendship. This reverses the natural course of things. It robs the industrious of the fruits of their labor, and often enables the idle and rapacious to live in ease and comfort at the expense of the better part of the community.

Was there not another evil but the possibility of continuing such palpable injustice, I would object to the present system. But, sir, I will, out of many more, mention another. How are your domestic creditors situated? I will not go to the general creditors. I mean the military creditor — the man who, by the vices of your system, is urged to part with his money for a trivial consideration — the poor man, who has the paper in his pocket for which he can receive little or nothing. There is a greater number of these meritorious men than the honorable gentleman believes. These unfortunate men are compelled to receive paper instead of gold — paper which nominally represents something, but which in reality represents almost nothing. A proper government could do them justice, but the present one cannot do it. They are therefore forced to part from that paper which they

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fought for, and get less than a dollar for twenty shillings. I would, for my part, and I hope every other gentleman here would, submit to the inconvenience; but when I consider that the widows of gallant heroes, with their numerous offspring, are laboring under the most distressing indigence, and that these poor, unhappy people will be relieved by the adoption of this Constitution, I am still more impressed with the necessity of this change.

But, says the honorable gentleman, we are in peace. Does he forget the insurrection in Massachusetts? Perhaps he did not extend his philanthropy to that quarter. I was then in Congress, and had a proper opportunity to know the circumstances of this event. Had *Shays* been possessed of abilities, he might have established that favorite system of the gentleman — king, lords, and commons. Nothing was wanting to bring about a revolution but a great man to head the insurgents; but, fortunately, he was a worthless captain. There were thirty thousand stand of arms, nearly, in his power, which were defended by a pensioner of this country. It would have been sufficient had he taken this deposit. He failed in it; but, even after that failure, it was in the power of a great man to have taken it. But he wanted design and knowledge. Will you trust to the want of design and knowledge? Suppose another insurrection, headed by a different man: what will follow? Under a man of capacity, the favorite government of that gentleman might have been established in Massachusetts, and extended to Virginia.

But, sir, this is a consolidated government, he tells us; and most feelingly does he dwell on the imaginary dangers of this pretended consolidation. I did suppose that an honorable gentleman, whom I do not now see, (Mr. Madison,) had placed this in such a clear light that every man would have been satisfied with it.

If this were a consolidated government, ought it not to be ratified by a majority of the people as individuals, and not as states? Suppose Virginia, Connecticut, Massachusetts, and Pennsylvania, had ratified it; these four states, being a majority of the people of America, would, by their adoption, have made it binding on all the states, had this been a consolidated government. But it is only the government of those seven states who have adopted it. If the honorable gentleman will attend to this, we shall hear no more of consolidation.

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Direct taxation is another objection on which the honorable gentleman expatiates. This has been answered by several able gentlemen; but as the honorable gentleman reverts to the subject, I hope I shall be excused in saying a little on it. If union be necessary, direct taxes are also necessary for its support. If it be an inconvenience, it results from the union; and we must take its disadvantages with it: besides, it will render it unnecessary to recur to the sanguinary method which some gentlemen are said to admire. Had the Amphictyonic council had the power contained in that paper, would they have sent armies to levy money? Will the honorable gentleman say that it is more eligible and humane to collect money by carrying fire and sword through the country, than by the peaceable mode of raising money of the people, through the medium of an officer of peace, when it is necessary?

But says he, "The President will enslave you; Congress will trample on your liberties; a few regiments will appear; Mr. Chief Justice must give way; our mace-bearer is no match for a regiment." It was inhuman to place an individual against a whole regiment. A *few* regiments will not avail; I trust the supporters of the government would get the better of *many* regiments. Were so mad an attempt made, the people would assemble in thousands, and drive thirty times the number of their few regiments. We would then do as we have already done with the regiments of that king whom he so often tells us of.

The public liberty, says he, is designed to be destroyed. What does he mean? Does he mean that we, who are friends to that government, are not friends to liberty? No man dares to say so. Does he mean that he is a greater admirer of liberty than we are? Perhaps so. But I undertake to say that, when it will be necessary to struggle in the cause of freedom, he will find himself equalled by thousands of those who support this Constitution. The purse of the people of Virginia is not given up by that paper: they can take no more of our money than is necessary to pay our share of the public debts, and provide for the general welfare. Were 't otherwise, no man would be louder against it than myself.

He has represented our situation as contradistinguished from the other states. What does he mean? I ask if it be

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fair to attempt to influence gentlemen by particular applications to local interests? I say, it is not fair. Am I to be told, when I come to deliberate on the interest of Virginia, that it obstructs the interest of the county of Westmoreland? Is this obstruction a sufficient reason to neglect the collective interests of Virginia? Were it of a local nature, it would be right to prefer it; but, being of a general nature, the local interest must give way. I trust, then, that gentlemen will consider that the object of their deliberations is of a general nature. I disregard the argument which insinuated the propriety of attending to localities; and I hope that the gentlemen to whom it was addressed regard too much the happiness of the community to be influenced by it.

But he tells you that the Mississippi is insecure unless you reject this system, and that the transactions relating to it were carried on under a veil of secrecy. His arguments on this subject are equally as defective as those I have just had under consideration. But I feel myself called on by the honorable gentleman to come forward and tell the truth about the transactions respecting the Mississippi. In every action of my life in which I have been concerned, whether as soldier or politician, the good of my country was my first wish. I have attended not only to the good of the United States, but also to that of particular districts. There are men of integrity and truth here who were also then in Congress. I call on them to put me right with respect to those transactions. As far as I could gather from what was then passing, I believe there was not a gentleman in that Congress who had an idea of surrendering the navigation of that river. They thought of the best mode of securing it: some thought one way, and some another way. I was one of those men who thought the mode which has been alluded to the best to secure it. I shall never deny that it was my opinion. I was one peculiarly interested. I had a fortune in that country, purchased, not by *paper money*, but by gold, to the amount of eight thousand pounds. But private interest could not have influenced me. The public welfare was my criterion in my opinion. I united private interest to public interest, not of the whole people of Virginia, but of the United States. I thought I was promoting the real interest of the people. But, says he, it was under the veil of secrecy. There was no peculiar or uncommon

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desire manifested of concealing those transactions They were carried on in the same manner with others of the same nature, and consonant to the principles of the Confederation. I saw no anxiety on the occasion. I wish he would send to the president to know their secrets. He would be gratified fully.

The honorable member, this day, among other things, gave us a statement of those states that have passed the new system, of those who have not, and of those who would probably not pass it. He called his assertions *facts*; but I expected he would show us something to prove their existence.

He tells us that New Hampshire and Rhode Island have refused it. Is that a *fact?* It is not a *fact.* New Hampshire has not refused it. That state postponed her ultimate decision till she could know what Massachusetts would do; and whatever the gentleman may say of borderers, the people of that state were very right in conducting themselves as they did. With respect to Rhode Island, I hardly know any thing. That small state has so rebelled against justice, and so knocked down the bulwarks of probity, rectitude, and truth, that nothing rational or just can be expected from her.

She has not, however, I believe, called a convention to deliberate on it, much less formally refused it. From her situation, it is evident that she must adopt it, unless she departs from the primary maxims of human nature, which are those of self-preservation. New York and North Carolina are so high in opposition, he tells us, that they will certainly reject it. Here is another of his facts; and he says he has the highest authority. As he dislikes the veil of secrecy, I beg he would tell us that high authority from which he gets this fact. Has he official communications? Have the executives of those states informed him? Has our executive been apprized of it? I believe not. I hold his unsupported authority in contempt.

Pennsylvania, Delaware, and New Jersey, have adopted; but, says he, they were governed by local considerations. What are these local considerations? The honorable gentleman draws advantages from every source; but his arguments operate very often against himself. I admire the state of Pennsylvania; she deserves the attachment of every lover

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of his country. Poor Pennsylvania, says he, has been tricked into it. What an insult! The honorable gentleman would not say so of an individual: I know his politeness too well. Will he insult the majority of a free country? Pennsylvania is a respectable state. Though not so extensive as Virginia, she did as much as any state, in proportion, during the war; and has done as much since the peace. She has done as much in every situation, and her citizens have been as remarkable for their virtue and science, as those of any state. The honorable gentleman has told you that Pennsylvania has been tricked into it; and in so saying has insulted the majority of a free country, in a manner in which I would not dare to insult any private gentleman. The other adopting states have not been tricked into it, it seems. Why? The honorable gentleman cannot tell us why these have not been tricked into it, any more than he can tell why Pennsylvania has been tricked into it. Is it because of their superior power and respectability? or is it the consequence of their local situation? But the state of New York has too much virtue to be governed by local considerations. He insinuates this by his assertion that she will not regard the examples of the other states. How can he, without being inconsistent, and without perverting facts, pretend to say that New York is not governed by local considerations in her opposition? Is she not influenced by the local consideration of retaining that impost of which he says Connecticut and New Jersey wish to get a participation? What does he say of North Carolina? How will local considerations affect her? If the principle be uniform, she will be led by the local consideration of wishing to get a participation of the impost of the importing states. Is it to be supposed that she will be so blind to her own interest as to depart from this principle?

When he attempted to prove that you ought not to adopt that paper which I admire, he told you that it was untrodden ground. This objection goes to the adoption of any government. The British government ought to be proposed perhaps. It is trodden ground. I know not of any reason to operate against a system, because it is untrodden ground.

The honorable gentleman objects to the publication from time to time, as being ambiguous and uncertain. Does not *from time to time* signify convenient time? If it admits of

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an extension of time, does it not equally admit of publishing the accounts at very short periods? For argument sake, say they may postpone the publications of the public accounts to the expiration of every ten years: will their constituents be satisfied with this conduct? Will they not discard them, and elect other men, who will publish the accounts as often as they ought? It is also in their power to publish every ten days. Is it not more probable that they will do their duty than that they will neglect it, especially as their interest is inseparably connected with their duty? He says they may conceal them for a century. Did you ever hear so trivial and so captious an argument? I *felt* when the great genius of the gentleman nodded on that occasion. Another objection of the honorable gentleman (whom I cannot follow through all his windings and turnings) is, that those parts of the Constitution which are in favor of privileges, are not so clearly expressed as those parts which concede powers. I beg your attention, because this is a leading distinction. As long as the privilege of representation is well secured, our liberties cannot be easily endangered. I conceive this is secured in this country more fully than in any other. How are we, the people of Amerrica, as landholders, compared to the people of all the world besides? Vassalage is not known here. A small quantity of land entitles a man to a freehold: land is pretty equally divided, and the law of descents, in this country, will carry this division farther and farther — perhaps even to an extreme. This, of itself, secures this great privilege. Is it so in any other country? Is it so in England? We differ in this from all other countries. I admire this paper in this respect. It does not impair our right of suffrage. Whoever will have a right to vote for a representative to our legislature, will also have a right to vote for a federal representative. This will render that branch of Congress very democratic. We have a right to send a certain proportion. If we do not exert that right, it will be our folly.

It was necessary to provide against licentiousness, which is so natural to our climate. I dread more from the licentiousness of the people than from the bad government of rulers. Our privileges are not, however, in danger: they are better secured than any bill of rights could have secured them.

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I say that this new system shows, in stronger terms than words could declare, that the liberties of the people are secure. It goes on the principle that all power is in the people, and that rulers have no powers but what are enumerated in that paper. When a question arises with respect to the legality of any power, exercised or assumed by Congress, it is plain on the side of the governed: *Is it enumerated in the Constitution?* If it be, it is legal and just. It is otherwise arbitrary and unconstitutional. Candor must confess that it is infinitely more attentive to the liberties of the people than any state government.

[Mr. Lee then said, that, under the state governments, the people reserved to themselves certain enumerated rights, and that the rest were vested in their rulers; that, consequently, the powers reserved to the people were but an inconsiderable exception from what were given to their rulers; but that, in the federal government, the rulers of the people were vested with certain defined powers, and that what were not delegated to those rulers were retained by the people. The consequence of this, he said, was, that the limited powers were only an exception to those which rested in the people, and that they knew what they had given up, and could be in no danger. He exemplified the proposition in a familiar manner. He observed, that, if a man delegated certain powers to an agent, it would be an insult upon common sense to suppose that the agent could legally transact any business for his principal which was not contained in the commission whereby the powers were delegated; but that, if a man empowered his representative or agent to transact all his business except certain enumerated parts, the clear result was, that the agent could lawfully transact every possible part of his principal's business except the enumerated parts; and added, that these plain propositions were sufficient to demonstrate the inutility and *folly* (were he permitted to use the expression) of bills of rights.]

He then continued: I am convinced that that paper secures the liberty of Virginia, and of the United States. I ask myself if there be a single power in it which is not necessary for the support of the Union; and, as far as my reasoning goes, I say that, if you deprive it of one single power contained in it, it will be "*vox et præterea nihil.*" Those who are to go to Congress will be the servants of the people. They are created and deputed by us, and removable by us. Is there a greater security than this in our state government? To fortify this security, is there not a constitutional remedy in the government, to reform any errors which shall be found inconvenient? Although the honorable gentleman has dwelt so long upon it, he has not made it appear otherwise. The Confederation can neither render us happy at home nor respectable abroad. I conceive this system will

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do both. The two gentlemen who have been in the grand Convention have proved, incontestably, that the fears arising from the powers of Congress are groundless. Having now gone through some of the principal parts of the gentleman's harangue, I shall take up but a few moments in replying to its conclusion.

I contend, for myself and the friends of the Constitution, that we are as great friends to liberty as he or any other person, and that we will not be behind in exertions in its defence when it is invaded. For my part, I trust that, young as I am, I shall be trusted, in the support of freedom, as far as the honorable gentleman. I feel that indignation and contempt, with respect to his previous amendments, which he expresses against posterior amendments. I can see no danger from a previous ratification. I see infinite dangers from previous amendments. I shall give my suffrage for the former, because I think the *happiness* of my country depends upon it. To maintain and secure that happiness is the first object of my wishes. I shall brave all storms and political dangers.

Gov. RANDOLPH. Having consumed heretofore so much of your time, I did not intend to trouble you again so soon. But now I call on this committee, by way of right, to permit me to answer some severe charges against the friends of the new Constitution. It is a right I am entitled to, and shall have. I have spoken twice in this committee. I have shown the principles which actuated the general Convention; and attempted to prove that, after the ratification of the proposed system by so many states, the preservation of the Union depended on its adoption by us. I find myself attacked in the most illiberal manner by the honorable gentleman, (Mr. Henry.) I disdain his aspersions and his insinuations. His asperity is warranted by no principle of parliamentary decency, nor compatible with the least shadow of friendship; and if our friendship must fall, *let it fall, like Lucifer, never to rise again!* Let him remember that it is not to answer him, but to satisfy his respectable audience, that I now get up. He has accused me of inconsistency in this very respectable assembly. Sir, if I do not stand on the bottom of integrity, and pure love for Virginia, as much as those who can be most clamorous, I wish to resign my existence. Consistency consists in actions,

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and not in empty, specious words. Ever since the first entrance into that federal business, I have been inevitably governed by an invincible attachment to the happiness of the people of America. Federal measures had been before that time repudiated. The augmentation of congressional powers was dreaded. The imbecility of the Confederation was proved and acknowledged. When I had the honor of being deputed to the federal Convention, to revise the existing system, I was impressed with the necessity of a more energetic government, and thoroughly persuaded that the salvation of the people of America depended on an intimate and firm union. The honorable gentlemen there can say, that, when I went thither, no man was a stronger friend to such a union than myself. I informed you why I refused to sign.

I understand not him who wishes to give a full scope to licentiousness and dissipation — who would advise me to reject the proposed plan, and plunge us into anarchy.

[Here his excellency, Governor Randolph, read the conclusion of his public letter, (wherein he says, that, notwithstanding his objections to the Constitution, he would adopt it rather than lose the Union,) and proceeded to prove the consistency of his present opinion with his former conduct; when Mr. Henry arose, and declared that he had no personal intention of offending any one; that he did his duty, but that he did not mean to wound the feelings of any gentleman; that he was sorry if he offended the honorable gentleman without intending it; and that every gentleman had a right to maintain his opinion. His excellency then said that he was relieved by what the honorable gentleman said; that, were it not for the concession of the gentleman, he would have made some men's hair stand on end, by the disclosure of certain facts. Mr. Henry then requested that, if he had any thing to say against him, he would disclose it. His excellency then continued, that as there were some gentlemen there who might not be satisfied by the recantation of the honorable gentleman, without being informed, he should give them some information on the subject; that his ambition had ever been to promote the Union; that he was no more attached to it now than he always had been; and that he could in some degree prove it by the paper which he held in his hand, which was his public letter. He then read a considerable part of his letter, wherein he expressed his friendship to the Union. He then informed the committee, that, on the day of election of delegates for the Convention, for the county of Henrico, it being incumbent upon him to give his opinion, he told the respectable freeholders of that county his sentiments — that he wished not to become a member of that Convention; that he had not attempted to create a belief that he would vote against the Constitution; that he did really unfold to them his actual opinion, which was perfectly reconcilable with the suffrage he was going to give in favor of the Constitution. He then read part of a letter which he

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had written to his constituents on the subject, which was expressive of sentiments amicable to a union with other states. He then threw down the letter on the clerk's table, and declared that it might lie there for the *inspection of the curious and malicious.*]

He then proceeded thus: I am asked why I have thought proper to patronize this government. Not because I am one of those *illuminated*, but because the felicity of my country requires it. The highest honors have no allurements to charm me. If he be as little attached to public places as I am, he must be free from ambition. It is true that I am now in an elevated situation; but I consider it as a far less happy or eligible situation than that of an inconsiderable landholder. Give me peace — I ask no more. I ask no honor or gratification. Give me public peace, and I will carve the rest for myself. The happiness of my country is my first wish. I think it necessary for that happiness that this Constitution be now adopted; for, in spite of the representation of the honorable gentleman, I see a storm growling over Virginia. No man has more respect for Virginia, or a greater affection for her citizens, than I have; but I cannot flatter you with a kinder or more agreeable representation, while we are surrounded by so many dangers, and when there is so much rancor in the hearts of your citizens.

I beg the honorable gentleman to pardon me for reminding him that his historical references and quotations are not accurate. If he errs so much with respect to his *facts*, as he has done in *history*, we cannot depend on his information or assertions. He had, early in the debates, instanced Holland as a happy democracy, highly worthy of our imitation. From thence he went over the mountains to Switzerland, to find another democracy. He represented all those cantons as being of the democratic kind. I wish he had reflected a little more, and distinguished those that are democratical from those which are aristocratical. He has already been reminded of his errors. I should not now put him right with respect to history, had he not continued his mistakes. Consult all writers — from Sir William Temple to those of modern times — they will inform you, that the republic of Holland is an aristocracy. He has inveighed against the stadtholder. I do not understand his application of this to the American President. It is well known that, but for the

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stadtholder, the republic would have been ruined long ago. Holland, it seems, has no ten miles square. But she has the Hague, where the deputies of the states assemble. It has been found necessary to have a fixed place of meeting. But the influence which it has given the province of Holland to have the seat of the government within its territory, subject in some respects to its control, has been injurious to the other provinces. The wisdom of the Convention is therefore manifest in granting the Congress exclusive jurisdiction over the place of their session. I am going to correct a still greater error which he has committed, not in order to show any little knowledge of history I have, (for I am by no means satisfied with its extent,) but to endeavor to prevent any impressions from being made by improper and mistaken representations.

He said that Magna Charta destroyed all implication. This was not the object of Magna Charta, but to destroy the power of the king, and secure the liberty of the people. The bill of rights was intended to restore the government to its primitive principles.

We are harassed by quotations from Holland and Switzerland, which are inapplicable in themselves, and not founded in fact.

I am surprised at his proposition of previous amendments, and his assertion that subsequent ones will cause disunion. Shall we not lose our influence and weight in the government to bring about amendments, if we propose them previously? Will not the senators be chosen, and the electors of the President be appointed, and the government brought instantly into action, after the ratification of nine states? In this disunion, when will the effect proposed be produced? But no man here is willing to believe what the honorable gentleman says on this point. I was in hopes we should come to some degree of order. I fear that order is no more. I believe that we should confine ourselves to the particular clause under consideration, and to such other clauses as might be connected with it.

Why have we been told that maxims can alone save nations; that our maxims are our bill of rights; and that the liberty of the press, trial by jury, and religion, are destroyed? Give me leave to say, that the maxims of Virginia are union and justice.

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The honorable gentleman has passed by my observations with respect to British debts. He has thought proper to be silent on this subject. My observations must therefore have full force. Justice is, and ought to be, our maxim; and must be that of every temperate, moderate, and upright man. I should not say so much on this occasion, were it not that I perceive that the flowers of rhetoric are perverted, in order to make impressions unfavorable and inimical to an impartial and candid decision. What security can arise from a bill of rights? The predilection for it has arisen from a misconception of its principles. It cannot secure the liberties of this country. A bill of rights was used in England to limit the king's prerogative; he could trample on the liberties of the people in every case which was not within the restraint of the bill of rights.

Our situation is radically different from that of the people of England. What have we to do with bills of rights? Six or seven states have none. Massachusetts has declared her bill of rights as no part of her Constitution. Virginia has a bill of rights, but it is no part of her Constitution. By not saying whether it is paramount to the Constitution or not, it has left us in confusion. Is the bill of rights consistent with the Constitution? Why, then, is it not inserted in the Constitution? Does it add any thing to the Constitution? Why is it not in the Constitution? Does it except any thing from the Constitution? Why not put the exceptions in the Constitution? Does it oppose the Constitution? This will produce mischief. The judges will dispute which is paramount. Some will say, the bill of rights is paramount: others will say, that the Constitution, being subsequent in point of time, must be paramount. A bill of rights, therefore, accurately speaking, is quite useless, if not dangerous to a republic.

I had objections to this Constitution. I still have objections to it. [Here he read the objections which appeared in his public letter.] The gentleman asks, How comes it to pass that you are now willing to take it? I answer, that I see Virginia in such danger, that, were its defects greater, I would adopt it. These dangers, though not immediately present to our view, yet may not be far distant, if we disunite from the other states. I will join any man in endeavoring

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to get amendments, after the danger of disunion is removed by a previous adoption.

The honorable gentleman says that the federal spirit leads to disunion. The federal spirit is not superior to human nature, but it cannot be justly charged with having a tendency to disunion. If we were to take the gentleman's discrimination as our guide, the spirit of Virginia would be dictatorial. Virginia dictates to eight states. A single amendment, proposed as the condition of our accession, will operate total disunion. Where is the state that shall conceive itself obliged to aid Virginia? The honorable gentleman says there is no danger—great in imagination, but nothing in reality. What is the meaning of this? What would this state do, if opposed alone to the arms of France or Great Britain? Would there be no danger in such a case? Was not the assistance of France necessary to enable the United States to repel the attack of Great Britain? In the last war, by union and judicious concert of measures, we were triumphant. Can this be the case in a future war, if we be disunited from our sister states? What would have been the consequence, if, in the late war, we had reposed on our arms, and depended on Providence alone? Shall we ever be at peace, because we are so now? Is it unnecessary to provide against future events? His objection goes to prove that Virginia can stand by herself. The advice that would attempt to convince me of so pernicious an error I treat with disdain. Our negroes are numerous, and are daily becoming more so. When I reflect on their comparative number, and comparative condition, I am the more persuaded of the great fitness of becoming more formidable than ever.

It seems that republican borderers are peaceable. This is another *lapse* in history. Did he never know that a number of men were as much inspired with ambition as any individual? Had he consulted history, he would have known that the most destructive wars have been carried on, with the most implacable hatred, between neighboring republics. It is proved by his favorite Roman history, that republican borderers are as apt to have rancor in their hearts as any. The institutions of Lycurgus himself could not restrain republican borderers from hostility. He treats the

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idea of commercial hostility as extravagant. History might inform him of its reality. Experience might give him some instruction on the subject.

Go to the Potomac, and mark what you see. I had the mortification to see vessels within a very little distance from the Virginian shore, belonging to Maryland, driven from our ports by the badness of our regulations. I take the liberty of a freeman in exposing what appears to me to deserve censure. I shall take that liberty in reprehending the wicked act which attainted Josiah Phillips. Because he was not a Socrates, is he to be attainted at pleasure? Is he to be attainted because he is not among the high of reputation? After the use the gentleman made of a word innocently used to express a crowd, I thought he would be careful himself. We are all equal in this country. I hope that, with respect to birth, there is no superiority. It gives me pleasure to reflect that, though a man cannot trace up his lineage, yet he is not to be despised. I shall always possess these sentiments and feelings. I shall never aspire at high offices. If my country should ever think my services worth any thing, it shall be in the humble capacity of a representative: higher than this I will not aspire.

He has expatiated on the turpitude of the character of Josiah Phillips. Has this any thing to do with the principle on which he was attainted? We all agree that he was an abandoned man. But if you can prepare a bill to attaint a man, and pass it through both houses in an instant, I ask you, who is safe? There is no man on whom a cloud may not hang some time or other, if a demagogue should think proper to take advantage of it to his destruction. Phillips had a commission in his pocket at that time. He was, therefore, only a prisoner of war. This precedent may destroy the best man in the community, when he was arbitrarily attainted merely because he was not a Socrates.

He has perverted my meaning with respect to our government. I spoke of the Confederation. He took no notice of this. He reasoned of the Constitution of Virginia. I had said nothing of it on that occasion. Requisitions, however, he said, were safe and advisable, because they give time for deliberation. Will not taxation do this? Will not Congress, when laying a tax, bestow a thought upon it? But he means to say, that the state itself ought to say

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whether she pleases to pay or not. Congress, by the Confederation, has power to make any requisitions. The states are constitutionally bound to pay them. We have seen their happy effects. When the requisitions are right, and duly proportioned, it is in the power of any state to refuse to comply with them.

He says that he would give them the impost. I cannot understand him, as he says he has an hereditary hatred to custom-house officers. Why despise them? Why should the people hate them? I am afraid he has accidentally discovered a principle that will lead him to make greater opposition than can be justified by any thing in the Constitution. I would undertake to prove the fallacy of every observation he made on that occasion; but it is too late now to add any more. At another opportunity I shall give a full refutation to all he has said.

TUESDAY, *June* 10, 1788.

[The 1st and 2d sections still under consideration.]

Gov. RANDOLPH. Mr. Chairman, I was restrained yesterday, by the lateness of the day, from making those observations which I intended to make in answer to the honorable gentleman who had gone before me. I shall now resume that subject. I hope we shall come at last to a decision. I shall not forever wander from the point, or transgress the rules of this house; but, after making answer to him, shall go on in regular order.

He observed that the only question was, with respect to previous and subsequent amendments. Were this the only question, sir, I am sure this inconsiderable matter would not long retard a decision. I conceive the preservation of the Union to be a question of great magnitude. This must be a peculiar object of my attention, unless I depart from that rule which has regulated my conduct since the introduction of federal measures. Suppose, contrary to my expectation, this Convention should propose certain amendments previous to its ratification,—mild and pliant as those states may be who have received it unanimously; flexible as those may be who have adopted it by a majority; I had rather argue, from human nature, that they will not recede from their resolutions, to accommodate our caprice. Is there no jealousy existing between the states? They discover no superiority,

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in any one state, of arrogating to itself a right to dictate what ought to be done. They would not see the reasons of such amendments, for some amendments in themselves are really dangerous. The same reasons could not be impressed on all the states. I shall mention one example: I shall suppose, for instance, that we shall propose, as an amendment, that the President shall have a council. I conceive a council to be injurious to the executive. The counsellors will either impede or clog the President; or, if he be a man of dexterity, they will be governed by him. They will also impair his responsibility. Is it probable that all the other states would think alike on the subject, or agree to such an alteration? As there is a mode in the Constitution itself to procure amendments, not by reference to the people, but by the interposition of the state legislatures, will the people of Virginia bind themselves not to enter into the Union till amendments shall have been obtained? I refer it to any gentleman here, whether this may not entirely exclude us from the Union.

The honorable gentleman then told us, that Maryland held out, and that there can be no danger from our holding out of the Union; that she refused to come into the Confederation until the year 1781, when she was pressed by the then Congress. Is this a proper comparison? The fear of the British army and navy kept the states together. This fear induced that state to come into the Union then, otherwise the Union would have been destroyed. We are also told that Vermont held out. His information is inaccurate. Pardon me for saying that it is not to be found in the history of those times. The right to that territory was long in dispute between New York and Connecticut. The inhabitants took that opportunity of erecting themselves into a state. They pressed Congress for admission into the Union. Their solicitations were continually opposed till the year 1781, when a kind of assent was given. Can it be said, from this, that the people of Vermont held out against the Confederation of twelve states? Were they sufficiently wealthy and numerous to do so? Virginia is said to be able to stand by herself. From her situation she has cause to fear. She has also cause to fear from her inability to raise an army, a navy, or money. I contend that she is not able to stand by herself. I am sure that every man who comes from the ex-

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posed parts of this country is well convinced of this truth. As these have been enumerated, it would be useless to go over them again. He then told us that an error in government never can be removed. I will acknowledge, with him, that there are governments in Europe, whereof the defects have a long time been unaltered, and are not easily changed.

We need not go farther than the war to find a willing relinquishment of power. Look at the Confederation: you will find there such a voluntary relinquishment. View the convention at Annapolis: the object of its delegation involved in its nature some relinquishment of power. It produced this effect — all the states, except Rhode Island, agreed to call a general Convention, to revise the Confederation, and invest Congress with more power. A general Convention has been called; it has proposed a system which concedes considerable powers to Congress. Eight states have already assented to this concession. After this, can we say that men will not voluntarily relinquish power? Contrast this country with Scotland, blessed with union. The circumstances of the two countries are not dissimilar. View Scotland: that country is greatly benefited by union. It would not be now in its present flourishing situation without the auspices of England. This observation brings us to the necessity of union.

Were we not to look to futurity, have we nothing to fear from the present state of Europe? We are exposed at sea. The honorable gentleman tells us we have no hostility to fear from that quarter; that our ambassador at Paris would have informed us if there were any combustibles preparing. If he has not done any such thing, it is no conclusive evidence of safety. Nations have passions like men. It is the disposition of nations to attack where there is a demonstrable weakness. Are you weak? Go to history; it will tell you, you will be insulted. One insult will produce another, till at last it produces a partition. So, when they tell us there is no storm gathering, they ought to support their allegations by some probable evidence. The honorable gentleman then told us that armies do not collect debts; but armies make reprisals. If the debts which we owe continue on the disgraceful footing they have been on hitherto, without even the payment of interest, we may well expect such reprisals. The seizure of our vessels in foreign ports must be

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the certain consequence of the continuance of such a disgraceful conduct. He then informed us that no danger was to be apprehended from Spain — that she trembles for Mexico and Peru. That nation, sir, is a powerful nation, and has immense resources. What will she be when united with France and other nations who have cause of complaint against us? Mr. Chairman, Maryland seems, too, to be disregarded. The loss of the Union would not bring her arms upon our heads: — look at the Northern Neck! If the Union is dissolved, will it adhere to Virginia? Will the people of that place sacrifice their safety for us? How are we to retain them? By force of arms? Is this the happy way he proposes for leaving us out of the Union?

We are next informed that there is no danger from the borders of Maryland and Pennsylvania, and that my observations upon the frontiers of England and Scotland are inapplicable. He distinguishes republican from monarchical borderers, and ascribes pacific meekness to the former, and barbarous ferocity to the latter. There is as much danger, sir, from republican borderers as from any other. The danger results from the situation of borderers, and not from the nature of the government under which they live. History will show that as much barbarity and cruelty have been committed upon one another by republican borderers as by any other. We are borderers upon three states, two of which are ratifying states. I therefore repeat, sir, that we have danger to apprehend from this quarter.

As to the people's complaints of the government, the gentleman must either have misunderstood me, or went over very slightly what I said of the Confederation. He spoke of the Constitution of Virginia, concerning which I said nothing. The Confederation, sir, on which we are told we ought to trust our safety, is totally void of coercive power and energy. Of this the people of America have been long convinced; and this conviction has been sufficiently manifested to the world. Of this I spoke, and now I repeat, that if we trust to it, we shall be defenceless. The general government ought to be vested with powers competent to our safety, or else the necessary consequence must be, that we shall be defenceless.

The honorable gentleman tells us that, if the project at Albany for the colonial consolidation, as he terms it, had

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been completed, it would have destroyed all union and happiness. What has that to do with this paper? It tells us what the present situation of America is. Can any man say he could draw a better picture of our situation than that paper? He says that, by the completion of that project, the king of Great Britain might have bound us so tight together, that resistance would have been ineffectual. Does it not tell us that union is necessary? Will not our united strength be more competent to our defence, against any assault, than the force of a part? If, in their judgment alone who could decide on it, it was judged sufficient to secure their happiness and prosperity, why say that that project would have destroyed us? But the honorable gentleman again recurs to his beloved requisitions, on which he advises us to trust our happiness. Can any thing be more imprudent than to put the general government on so humiliating and disgraceful a footing? What are they but supplications and entreaties to the states to do their duty? Shall we rely on a system of which every man knows the inefficacy? One cannot conceive any thing more contemptible than a government which is forced to make humble applications to other governments for the means of its common support — which is driven to apply for a little money to carry on its administration a few months. After the total incapacity of the Confederation to secure our happiness has been fully experienced, what will be the consequence if we reject this Constitution? Shall we recur to separate confederacies? The honorable gentleman acknowledges them to be evils which ought not to be resorted to but on the last necessity — they are evils of the first magnitude.

Permit me to extract out of the confederation of Albany a fact of the highest authority, because drawn from human nature, which clearly demonstrates the fatal impolicy of separate confederacies. [Here he made a quotation to that effect.] If there is a gentleman here who harbors in his mind the idea of a separate confederacy, I beg him to consider the consequence. Where shall we find refuge in the day of calamity? The different confederacies will be rivals in power and commerce, and therefore will soon be implacable enemies of one another. I ask if there be any objection to this system, that will not come with redoubled energy against any other plan. See the defects in this Constitution,

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and examine if they do not appear with tenfold force in separate confederacies. After having acknowledged the evil tendency of separate confederacies, he recurs to this—that this country is too extensive for the system. If there be an executive dependent for his election on the people, a judiciary which will administer the laws with justice, no extent of country will be too great for a republic.

Where is there a precedent to prove that this country is too extensive for a government of this kind? America cannot find a precedent to prove this. Theoretic writers have adopted a position that extensive territories will not admit of a republican government. These positions were laid down before the science of government was as well understood as it is now. Where would America look for a precedent to warrant her adoption of that position? If you go to Europe, before arts and sciences had arrived at their present perfection, no example worthy of imitation can be found. The history of England, from the reign of Henry VII.; of Spain, since that of Charles V.; and of France, since that of Francis I., prove that they have greatly improved in the science of politics since that time. Representation, the source of American liberty and English liberty, was a thing not understood in its full extent till very lately.

The position I have spoken of was founded upon an ignorance of the principles of representation. Its force must be now done away, as this principle is so well understood. If laws are to be made by the people themselves, in their individual capacities, it is evident that they cannot conveniently assemble together, for this purpose, but in a very limited sphere; but if the business of legislation be transacted by representatives, chosen periodically by the people, it is obvious that it may be done in any extent of country. The experience of this commonwealth, and of the United States, proves this assertion.

Mr. Chairman, I am astonished that the rule of the house to debate regularly has not been observed by gentlemen. Shall we never have order? I must transgress that rule now, not because I think the conduct of the gentleman deserves imitation, but because the honorable gentleman ought to be answered. In that list of facts with which he would touch our affections, he has produced a name (Mr. Jefferson) which will ever be remembered with gratitude by this common-

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wealth I hope that his life will be continued, to add, by his future actions, to the brilliancy of his character. Yet I trust that his name was not mentioned to influence any member of this house. Notwithstanding the celebrity of his character, his name cannot be used as authority against the Constitution. I know not his authority. I have had no letter from him. As far as my information goes, it is only a report circulated through the town, that he wished nine states to adopt, and the others to reject it, in order to get amendments. Which is the ninth state to introduce the government? That illustrious citizen tells you, that he wishes the government to be adopted by nine states, to prevent a schism in the Union. This, sir, is my wish. I will go heart and hand to obtain amendments, but I will never agree to the dissolution of the Union. But unless a ninth state will accede, this must inevitably happen. No doubt he wished Virginia to adopt. I wish not to be bound by any man's opinion; but, admitting the authority which the honorable gentleman has produced to be conclusive, it militates against himself. Is it right to adopt? He says, no; because there is a President. I wish he was eligible after a given number of years.

I wish also some other changes to be made in the Constitution. But am I therefore obliged to run the risk of losing the Union, by proposing amendments previously, when amendments without that risk can be obtained afterwards? Am I to indulge capricious opinions so far as to lose the Union? The friends of the Union will see how far we carry our attachment to it, and will therefore concur with our amendments. The honorable gentleman has told us, that Holland is ruined by a stadtholder and a stadtholder's wife. I believe this republic is much indebted to that execrated stadtholder for her power and wealth. Recur to the history of Holland, and you will find that country never could have resisted Spain, had it not been for the stadtholder. At those periods when they had no stadtholder, their government was weak and their public affairs deranged. Why has this been mentioned? Was it to bias our minds against the federal executive? Are we to have no executive at all, or are we to have eight or ten? An executive is as necessary, for the security of liberty and happiness, as the two other branches of government. Every state in the Union has an executive.

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Let us consider whether the federal executive be wisely constructed. This is a point in which the constitution of every state differs widely as to the mode of electing their executives, and as to the time of continuing them in office. In some states the executive is perpetually eligible. In others he is rendered ineligible after a given period. They are generally elected by the legislature. It cannot be objected to the federal executive that the power is executed by one man. All the enlightened part of mankind agree that the superior despatch, secrecy, and energy, with which one man can act, render it more politic to vest the power of executing the laws in one man, than in any number of men. How is the President elected? By the people — on the same day throughout the United States — by those whom the people please. There can be no concert between the electors. The votes are sent sealed to Congress. What are his powers? To see the laws executed. Every executive in America has that power. He is also to command the army: this power also is enjoyed by the executives of the different states. He can handle no part of the public money except what is given him by law. At the end of four years, he may be turned out of his office. If he misbehaves he may be impeached, and in this case he will never be reëlected. I cannot conceive how his powers can be called formidable. Both houses are a check upon him. He can do no important act without the concurrence of the Senate. In England, the sword and purse are in different hands. The king has the power of the sword, and the purse is in the hands of the people alone. Take a comparison between this and the government of England.

It will prove in favor of the American principle. In England, the king declares war. In America, Congress must be consulted. In England, Parliament gives money. In America, Congress does it. There are consequently more powers in the hands of the people, and greater checks upon the executive here, than in England. Let him pardon me, when I say he is mistaken in passing a eulogium on the English government to the prejudice of this plan. Those checks which he says are to be found in the English government, are also to be found here. Our government is founded upon real checks. He ought to show there are no checks in it. Is this the case? Who are your representatives?

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They are chosen by the people for two years. Who are your senators? They are chosen by the legislatures, and a third of them go out of the Senate at the end of every second year. They may also be impeached. There are no better checks upon earth. Are there better checks in the government of Virginia? There is not a check in the one that is not in the other. The difference consists in the length of time, and in the nature of the objects. Any man may be impeached here — so he may there. If the people of Virginia can remove their delegates for misbehavior, by electing other men at the end of the year, so, in like manner, the federal representatives may be removed at the end of two, and the senators at the end of six years.

The honorable gentleman has praised the Virginia government. We can prove that the federal Constitution is equally excellent. The legislature of Virginia may conceal their transactions as well as the general government. There is no clause in the Constitution of Virginia to oblige its legislature to publish its proceedings at any period. The clause in this Constitution which provides for a periodical publication, and which the honorable gentleman reprobates so much, renders the federal Constitution superior to that of Virginia in this respect. The expression, *from time to time*, renders us sufficiently secure: it will compel them to publish their proceedings as often as it can conveniently and safely be done; and must satisfy every mind, without an illiberal perversion of its meaning. His bright ideas are very much obscured by torturing the explication of words. His interpretation of elections must be founded on a misapprehension. The Constitution says, that "the times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulation, except as to the place of choosing senators." It says, in another place, "that the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." Who would have conceived it possible to deduce, from these clauses, that the power of election was thrown into the hands of the rich? As the electors of the federal representatives are to have the same qualifications with those of the representatives of this state legislature, — or, in other words, as the electors of the one are

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to be electors of the other,—this suggestion is unwarrantable, unless he carries his supposition farther, and says that Virginia will agree to her own suicide, by modifying elections in such manner as to throw them into the hands of the rich. The honorable gentleman has not given us a fair object to be attacked; he has not given us any thing substantial to be examined.

It is also objected that the trial by jury, the writ of *habeas corpus*, and the liberty of the press, are insecure. But I contend that the *habeas corpus* is at least on as secure and good a footing as it is in England. In that country, it depends on the will of the legislature. That privilege is secured here by the Constitution, and is only to be suspended in cases of extreme emergency. Is this not a fair footing? After agreeing that the government of England secures liberty, how do we distrust this government? Why distrust ourselves? The liberty of the press is supposed to be in danger. If this were the case, it would produce extreme repugnancy in my mind. If it ever will be suppressed in this country, the liberty of the people will not be far from being sacrificed. Where is the danger of it? He says that every power is given to the general government that is not reserved to the states. Pardon me if I say the reverse of the proposition is true. I defy any one to prove the contrary. Every power not given it by this system is left with the states. This being the principle, from what part of the Constitution can the liberty of the press be said to be in danger?

[Here his excellency read the 8th section of the 1st article, containing all the powers given to Congress.]

Go through these powers, examine every one, and tell me if the most exalted genius can prove that the liberty of the press is in danger. The trial by jury is supposed to be in danger also. It is secured in criminal cases, but supposed to be taken away in civil cases. It is not relinquished by the Constitution; it is only not provided for. Look at the interest of Congress to suppress it. Can it be in any manner advantageous for them to suppress it? In equitable cases, it ought not to prevail, nor with respect to admiralty causes; because there will be an undue leaning against those characters, of whose business courts of admiralty will have cognizance. I will rest myself secure under this reflection

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—that it is impossible for the most suspicious or malignant mind to show that it is the interest of Congress to infringe on this trial by jury.

Freedom of religion is said to be in danger. I will candidly say, I once thought that it was, and felt great repugnance to the Constitution for that reason. I am willing to acknowledge my apprehensions removed; and I will inform you by what process of reasoning I did remove them. The Constitution provides that "the senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States." It has been said that, if the exclusion of the religious test were an exception from the general power of Congress, the power over religion would remain. I inform those who are of this opinion, that no power is given expressly to Congress over religion. The senators and representatives, members of the state legislatures, and executive and judicial officers, are bound, by oath or affirmation, to support this Constitution. This only binds them to support it in the exercise of the powers constitutionally given it. The exclusion of religious tests is an exception from this general provision, with respect to oaths or affirmations. Although officers, &c., are to swear that they will support this Constitution, yet they are not bound to support one mode of worship, or to adhere to one particular sect. It puts all sects on the same footing. A man of abilities and character, of any sect whatever, may be admitted to any office or public trust under the United States. I am a friend to a variety of sects, because they keep one another in order. How many different sects are we composed of throughout the United States! How many different sects will be in Congress! We cannot enumerate the sects that may be in Congress! And there are now so many in the United States, that they will prevent the establishment of any one sect, in prejudice to the rest, and will forever oppose all attempts to infringe religious liberty. If such an attempt be made, will not the alarm be sounded throughout America? If Congress should be as wicked as we are foretold they will be, they would not run the risk of

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exciting the resentment of all, or most, of the religious sects in America.

The judiciary is drawn up in terror. Here I have an objection of a different nature. I object to the appellate jurisdiction as the greatest evil in it. But I look at the Union — the object which guides me. When I look at the Union, objects of less consideration vanish, and I hope that the inconvenience will be redressed, and that Congress will prohibit the appeal with respect to matters of fact. When it respects only matters of law, no danger can possibly arise from it. Can Congress have any interest in continuing appeals of fact? If Pennsylvania has an interest in continuing it, will not Georgia, North Carolina, South Carolina, Virginia, New York, and the Eastern States, have an interest in discontinuing it? What advantage will its continuance be to Maryland, New Jersey, or Delaware? Is there not unanimity against it in Congress almost? Kentucky will be equally opposed to it. Thus, sir, all these will be opposed to one state. If Congress wish to aggrandize themselves by oppressing the people, the judiciary must first be corrupted! No man says any thing against them; they are more independent than in England.

But they say that the adoption of this system will occasion an augmentation of taxes. To object to it on this ground, is as much as to say, No Union — stand by yourselves! An increase of taxes is a terror that no friend to the Union ought to be alarmed at. The impost must produce a great sum. The contrary cannot be supposed. I conceive the particular expense of particular states will be diminished, and that diminution will, to a certain extent, support the Union. Either disunion, or separate confederacies, will enhance the expense. A union of all the states will be, even on economical principles, more to the interest of the people of Virginia than either separate confederacies or disunion. Had the states complied with the obligations imposed upon them by the Confederation, this attempt would never have been made. The unequivocal experience we have had of their inefficacy renders this change necessary. If union be necessary for our safety, we ought not to address the avarice of this house. I am confident that not a single member of this committee would be moved by such unworthy considerations. We are told that the people do not under-

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stand this government. I am persuaded that they do not — not for the want of more time to understand it, but to correct the misrepresentations of it. When I meditated an opposition to previous amendments, I marked the number of what appeared to me to be errors, and which I wished to be subsequently removed. But its real errors have been exaggerated; it has not met with a fair decision. It must be candidly acknowledged that there are some evils in it which ought to be removed. But I am confident that such gross misrepresentations have been made of it, that, if carried before any intelligent men, they would wonder at such glaring attempts to mislead, or at such absolute misapprehension of the subject. Though it be not perfect, any government is better than the risk which gentlemen wish us to run.

Another construction he gives is, that it is exclusively in the power of Congress to arm the militia, and that the states could not do it if Congress thought proper to neglect it. I am astonished how this idea could enter into the gentleman's mind, whose acuteness no man doubts. How can this be fairly deduced from the following clause? — "To provide for the organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress." He complains much of implication; but in this case he has made use of it himself, for his construction of this clause cannot possibly be supported without it. It is clear and self-evident that the pretended danger cannot result from the clause. Should Congress neglect to arm or discipline the militia, the states are fully possessed of the power of doing it; for they are restrained from it by no part of the Constitution.

The sweeping clause, as it is called, is much dreaded. I find that I differ from several gentlemen on this point. This formidable clause does not in the least increase the powers of Congress. It is only inserted for greater caution, and to prevent the possibility of encroaching upon the powers of Congress. No sophistry will be permitted to be used to explain away any of those powers; nor can they possibly assume any other power, but what is contained in the Constitution, without absolute usurpation. Another security is

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that, if they attempt such a usurpation, the influence of the state governments will nip it in the bud of hope. I know this government will be cautiously watched. The smallest assumption of power will be sounded in alarm to the people, and followed by bold and active opposition. I hope that my countrymen will keep guard against every arrogation of power. I shall take notice of what the honorable gentleman said with respect to the power to provide for the general welfare. The meaning of this clause has been perverted, to alarm our apprehensions. The whole clause has not been read together. It enables Congress "to lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States." The plain and obvious meaning of this is, that no more duties, taxes, imposts, and excises, shall be laid, than are sufficient to pay the debts, and provide for the common defence and general welfare, of the United States.

If you mean to have a general government at all, ought it not to be empowered to raise money to pay the debts, and advance the prosperity, of the United States, in the manner that Congress shall think most eligible? What is the consequence of the contrary? You give it power by one hand, and take it away from it by the other. If it be defective in some parts, yet we ought to give due credit to those parts which are ackowledged to be good. Does not the prohibition of paper money merit our approbation? I approve of it because it prohibits tender-laws, secures the widows and orphans, and prevents the states from impairing contracts. I admire that part which forces Virginia to pay her debts. If we recur to the bill of rights, which the honorable gentleman speaks so much of, we shall find that it recommends justice. Had not this power been given, my affection for it would not have been so great. When it obliges us to tread in the path of virtue, when it takes away from the most influential man the power of directing our passions to his own emolument, and of trampling upon justice, I hope to be excused when I say, that, were it more objectionable than it is, I should vote for the Union.

Mr. MONROE. Mr. Chairman, I cannot avoid expressing the great anxiety which I feel upon the present occasion

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— an anxiety that proceeds not only from a high sense of the importance of the subject, but from a profound respect for this august and venerable assembly. When we contemplate the fate that has befallen other nations, whether we cast our eyes back into the remotest ages of antiquity, or derive instruction from those examples which modern times have presented to our view, and observe how prone all human institutions have been to decay; how subject the best-formed and most wisely organized governments have been to lose their checks and totally dissolve; how difficult it has been for mankind, in all ages and countries, to preserve their dearest rights and best privileges, impelled as it were by an irresistible fate of despotism; — if we look forward to those prospects that sooner or later await our country, unless we shall be exempted from the fate of other nations, even to a mind the most sanguine and benevolent some gloomy apprehensions must necessarily crowd upon it. This consideration is sufficient to teach us the limited capacity of the human mind — how subject the wisest men have been to error. For my own part, sir, I come forward here, not as the partisan of this or that side of the question, but to commend where the subject appears to me to deserve commendation; to suggest my doubts where I have any; to hear with candor the explanation of others; and, in the ultimate result, to act as shall appear for the best advantage of our common country.

The American states exhibit at present a new and interesting spectacle to the eyes of mankind. Modern Europe, for more than twelve centuries past, has presented to view one of a very different kind. In all the nations of that quarter of the globe, there hath been a constant effort, on the part of the people, to extricate themselves from the oppression of their rulers; but with us the object is of a very different nature — to establish the dominion of law over licentiousness — to increase the powers of the national government to such extent, and organize it in such manner, as to enable it to discharge its duties, and manage the affairs of the states, to the best advantage. There are two circumstances remarkable in our colonial settlement: — 1st, the exclusive monopoly of our trade; 2nd, that it was settled by the commons of England only. The revolution, in having emancipated us from the shackles of Great Britain, has put the entire government in the hands of one order of people only —

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freemen; not of nobles and freemen. This is a peculiar trait in the character of this revolution. That this sacred deposit may be always retained there, is my most earnest wish and fervent prayer. That union is the first object for the security of our political happiness, in the hands of gracious Providence, is well understood and universally admitted through all the United States. From New Hampshire to Georgia, (Rhode Island excepted,) the people have uniformly manifested a strong attachment to the Union. This attachment has resulted from a persuasion of its utility and necessity. In short, this is a point so well known, that it is needless to trespass on your patience any longer about it. A recurrence has been had to history. Ancient and modern leagues have been mentioned, to make impressions. Will they admit of any analogy with our situation? The same principles will produce the same effects. Permit me to take a review of those leagues which the honorable gentleman has mentioned; which are, 1st, the Amphictyonic council; 2d, the Achæan league; 3d, the Germanic system; 4th, the Swiss cantons; 5th, the United Netherlands; and 6th, the New England confederacy. Before I develop the principles of these leagues, permit me to speak of what must influence the happiness and duration of leagues. These principally depend on the following circumstances: 1st, the happy construction of the government of the members of the union; 2d, the security from foreign danger. For instance, monarchies united would separate soon; aristocracies would preserve their union longer; but democracies, unless separated by some extraordinary circumstance, would last forever. The causes of half the wars that have thinned the ranks of mankind, and depopulated nations, are caprice, folly, and ambition: these belong to the higher orders of governments, where the passions of one, or of a few individuals, direct the fate of the rest of the community. But it is otherwise with democracies, where there is an equality among the citizens, and a foreign and powerful enemy, especially a monarch, may crush weaker neighbors. Let us see how far these positions are supported by the history of these leagues, and how far they apply to us. The Amphictyonic council consisted of three members — Sparta, Thebes, and Athens. What was the construction of these states? Sparta was a monarchy more analogous to the constitution of England than any I

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have heard of in modern times. Thebes was a democracy, but on different principles from modern democracies. Representation was not known then. This is the acquirement of modern times. Athens, like Thebes, was generally democratic, but sometimes changed. In these two states, the people transacted their business in person; consequently they could not be of any great extent. There was a perpetual variance between the members of this confederacy, and its ultimate dissolution was attributed to this defect. The weakest were obliged to call for foreign aid, and this precipitated the ruin of this confederacy. The Achæan league had more analogy to ours, and gives me great hopes that the apprehensions of gentlemen with respect to our confederacy are groundless. They were all democratic, and firmly united. What was the effect? The most perfect harmony and friendship subsisted between them, and they were very active in guarding their liberties. The history of that confederacy does not present us with those confusions and internal convulsions which gentlemen ascribe to all governments of a confederate kind. The most respectable historians prove this confederacy to have been exempt from those defects.

[Here Mr. Monroe read several passages in Polybius, tending to elucidate and prove the excellent structure of the Achæan league, and the consequent happy effects of this excellency.]

He then continued: This league was founded on democratical principles, and, from the wisdom of its structure, continued a far greater length of time than any other. Its members, like our states, by their confederation, retained their individual sovereignty, and enjoyed a perfect equality. What destroyed it? Not internal dissensions. They were surrounded by great and powerful nations — the Lacedemonians, Macedonians, and Ætolians. The Ætolians and Lacedemonians making war on them, they solicited the assistance of Macedon, who no sooner granted it than she became their oppressor. To free themselves from the tyranny of the Macedonians, they prayed succor from the Romans, who, after relieving them from their oppressors, soon totally enslaved them.

The Germanic body is a league of independent principalities. It has no analogy to our system. It is very injudiciously organized. Its members are kept together by the

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fear of danger from one another, and from foreign powers, and by the influence of the emperor.

The Swiss cantons have been instanced, also, as a proof of the natural imbecility of federal governments. Their league has sustained a variety of changes; and, notwithstanding the many causes that tend to disunite them, they still stand firm. We have not the same causes of disunion or internal variance that they have. The individual cantons composing the league are chiefly aristocratic. What an opportunity does this offer to foreign powers to disturb them by bribing and corrupting their aristocrats! It is well known that their services have been frequently purchased by foreign nations. Their difference of religion has been a source of divisions and animosity between them, and tended to disunite them. This tendency has been considerably increased by the interference of foreign nations, the contiguity of their position to those nations rendering such interference easy. They have been kept together by the fear of those nations, and the nature of their association; the leading features of which are a principle of equality between the cantons, and the retention of individual sovereignty. The same reasoning applies nearly to the United Netherlands. The other confederacy which has been mentioned has no kind of analogy to our situation.

From a review of these leagues, we find the causes of the misfortunes of those which have been dissolved, to have been a dissimilarity of structure in the individual members, the facility of foreign interference, and recurrence to foreign aid After this review of those leagues, if we consider our comparative situation, we shall find that nothing can be adduced, from any of them, to warrant a departure from a confederacy to a consolidation, on the principle of inefficacy in the former to secure our happiness. The causes which, with other nations, rendered leagues ineffectual and inadequate to the security and happiness of the people, do not exist here. What is the form of our state governments? They are all similar in their structure — perfectly democratic. The freedom of mankind has found an asylum here which it could find nowhere else. Freedom of conscience is enjoyed here in the fullest degree. Our states are not disturbed by a contrariety of religious opinions, and other causes of quarrels which other nations have. They have no causes of internal variance. Causes of war between the states have been rep-

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resen ed in all those terrors which splendid genius and brilliant imagination can so well depict. But, sir, I conceive they are imaginary — mere creatures of fancy. I will admit that there was a contrariety of sentiments — a contest in which I was a witness in some respects — a contest respecting the western unsettled lands. Every state, having a charter for the lands within its colonial limits, had its claims to such lands confirmed by the war. The other states contended that those lands belonged not to a part of the states, but to all; that it was highly reasonable and equitable that all should participate in what had been acquired by the efforts of all. The progress of this dispute gave uneasiness to the true friends of America; but territorial claims may now be said to be adjusted. Have not Virginia, North Carolina, and other states, ceded their claims to Congress? The disputes between Virginia and Maryland are also settled; nor is there an existing controversy between any of the states at present. Thus, sir, this great source of public calamity has been terminated without the adoption of this government.

Have we any danger to fear from the European countries? Permit me to consider our relative situation with regard to them, and to answer what has been suggested on the subject. Our situation is relatively the same to all foreign powers. View the distance between us and them: the wide Atlantic — an ocean three thousand miles across — lies between us. If there be any danger to these states to be apprehended from any of those countries, it must be Great Britain and Spain, whose colonies are contiguous to our country. Has there been any thing on the part of Great Britain, since the peace, that indicated a hostile intention towards us? Was there a complaint of a violation of treaty? She committed the first breach. Virginia instructed her delegation to demand a reparation for the negroes which had been carried away contrary to treaty. Being in Congress, I know the facts. The other states were willing to get some compensation for their losses, as well as Virginia. New York wished to get possession of the western posts situated within her territory. We wished to establish an amicable correspondence with that country, and to adjust all differences. The United States sent an ambassador for this purpose The answer sent was, that a compliance with the treaty on our part must precede it on theirs. These trans-

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actions are well known in every state, and need hardly be mentioned. Certain it is that Great Britain is desirous of peace, and that it is her true interest to be in friendship with us: it is also so with Spain. Another circumstance which has been dwelt upon is, the necessity of the protection of commerce. What does our commerce require? Does it want extension and protection? Will treaties answer these ends? Treaties, sir, will not extend your commerce. Our object is the regulation of commerce, and not treaties. Our treaties with Holland, Prussia, and other powers, are of no consequence. It is not to the advantage of the United States to make any compact with any nation with respect to trade. Our trade is engrossed by a country with which we have no commercial treaty. That country is Great Britain. That monopoly is the result of the want of a judicious regulation on our part. It is as valuable and advantageous to them, on its present footing, nay, more so, than it could be by any treaty. It is the interest of the United States to invite all nations to trade with them; to open their ports to all, and grant no exclusive privilege to any, in preference to others. I apprehend no treaty that could be made can be of any advantage to us. If those nations opened any of their ports to us in the East or West Indies, it would be of advantage to us; but there is no probability of this. France and Holland have been said to be threatening for the payment of the debts due to them. I understand that Holland has added to her favors to us by lending us other sums lately. This is a proof that she has no hostile intent against us, and that she is willing to indulge us. France has made no pressing demand. Our country has received from that kingdom the highest proof of favors which a magnanimous power can show: nor are there any grounds to suspect a diminution of its friendship. Having examined the analogy between the ancient leagues and our confederacy, and shown that we have no danger to apprehend from Europe, I conclude that we are in no danger of immediate disunion, but that we may calmly and dispassionately examine the defects of our government, and apply such remedies as we shall find necessary.

I proceed now to the examination of the Confederation, and to take a comparative view of this Constitution. In examining either, a division into two heads is proper, viz

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1st, the form, and, 2d, the powers, of the government. I consider the existing system defective in both respects. Is the Confederation a band of union sufficiently strong to bind the states together? Is it possessed of sufficient power to enable it to manage the affairs of the Union? Is it well organized, safe, and proper? I confess that, in all these instances, I consider it as defective; I consider it to be void of energy, and badly organized.

What are the powers which the federal government ought to have? I will draw the line between the powers necessary to be given to the federal, and those which ought to be left to the state governments. To the former I would give control over the national affairs; to the latter I would leave the care of local interests. Neither the Confederation, nor this Constitution, answers this discrimination. To make the first a proper federal government, I would add to it one great power — I would give it an absolute control over commerce. To render the system under consideration safe and proper, I would take from it one power only — I mean that of direct taxation. I conceive its other powers are sufficient without this. My objections to this power are, that I conceive it not necessary, impracticable under a democracy, (if exercised,) as tending to anarchy, or the subversion of liberty, and probably the latter. In the first place, it is unnecessary, because exigencies will not require it. The demands and necessities of government are now greater than they will be hereafter, because of the expenses of the war in which we were engaged, which cost us the blood of our best citizens, and which ended so gloriously.

There is no danger of war, as I have already said. Our necessities will therefore in a short time be greatly diminished. What are the resources of the United States? How are requisitions to be complied with? I know the government ought to be so organized as to be competent to discharge its engagements and secure the public happiness. To enable it to do these things, I would give it the power of laying an impost, which is amply sufficient with its other means. The impost, at an early period, was calculated at nearly a million of dollars. If this calculation was well founded, if it was so much at five per centum, what will it not amount to, when the absolute control of commerce will be in the hands of Congress? May we not suppose, when

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the general government will lay what duties it may think proper, that the amount will be very considerable? There are other resources. The back lands have already been looked upon as a very important resource. When we view the western extensive territory, and contemplate the fertility of the soil, the noble rivers which penetrate it, and the excellent navigation which may be had there, may we not depend on this as a very substantial resource?

In the third place, we have the resource of loans. This is a resource which is necessary and proper, and has been recurred to by all nations. The credit of our other resources will enable us to procure, by loans, any sums we may want. We have also, in the fourth place, requisitions, which are so much despised. These, sir, have been often productive. As the demands on the states will be but for trivial sums, after Congress shall be possessed of its other great resources, is it to be presumed that its application will be despised? If the government be well administered, or possess any part of the confidence of the people, is it presumed that requisitions, for trivial sums will be refused? I conclude, sir, that they will be readily complied with; and that they, with the imposts, back lands, and loans, will be abundantly sufficient for all the exigencies of the Union. In the next place, it appears to me that the exercise of the power of direct taxation is impracticable in this country, under a democracy.

Consider the territory lying between the Atlantic Ocean and the Mississippi. Its extent far exceeds that of the German empire. It is larger than any territory that ever was under any one free government. It is too extensive to be governed but by a despotic monarchy. Taxes cannot be laid justly and equally in such a territory. What are the objects of direct taxation? Will the taxes be laid on land? One gentleman has said that the United States would select out a particular object, or objects, and leave the rest to the states. Suppose land to be the object selected by Congress: examine its consequences. The landholder alone would suffer by such a selection. A very considerable part of the community would escape. Those who pursue commerce and arts would escape. It could not possibly be estimated equally. Will the taxes be laid on polls only? Would not the landholder escape in that case? How, then,

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will it be laid? On all property? Consider the consequences. Is it possible to make a law that shall operate alike in all the states? Is it possible that there should be sufficient intelligence for the men of Georgia to know the situation of the men of New Hampshire? Is there a precise similitude of situation in each state? Compare the situation of the citizens in different states.

Are there not a thousand circumstances showing clearly that there can be no law that can be uniform in its operation throughout the United States? Another gentleman said that information would be had from the state laws. Is not this reversing the principles of good policy? Can this substitution of one body to thirteen assemblies, in a matter that requires the most minute and extensive local information, be politic or just? They cannot know what taxes can be least oppressive to the people. The tax that may be convenient in one state may be oppressive in another. If they vary the objects of taxation in different states, the operation must be unequal and unjust. If Congress should fix the tax on some mischievous objects, what will be the tendency? It is to be presumed that all governments will, some time or other, exercise their powers, or else why should they possess them? Inquire into the badness of this government. What is the extent of the power of laying and collecting direct taxes? Does it not give to the United States all the resources of the individual states? Does it not give an absolute control over the resources of all the states? If you give the resources of the several states to the general government, in what situation are the states left? I therefore think the general government will preponderate.

Besides its possession of all the resources of the country, there are other circumstances that will enable it to triumph in the conflict with the states. Gentlemen of influence and character, men of distinguished talents, of eminent virtue, and great endowments, will compose the general government. In what a situation will the different states be, when all the talents and abilities of the country will be against them?

Another circumstance will operate in its favor, in case of a contest. The oath that is to be taken to support it will aid it most powerfully. The influence which the sanction

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of oaths has on men is irresistible. The religious authority of divine revelation will be quoted to prove the propriety of adhering to it, and will have great influence in disposing men's minds to maintain it.

It will also be strongly supported by the last clause in the 8th section of the 1st article, which vests it with the power of making all laws necessary to carry its powers into effect. The correspondent judicial powers will be an addi tional aid. There is yet another circumstance which will throw the balance in the scale of the general government. A disposition in its favor has shown itself in all parts of the continent, and will certainly become more and more predominant. Is it not to be presumed that, if a contest between the state legislatures and the general government should arise, the latter would preponderate? The Confederation has been deservedly reprobated for its inadequacy to promote the public welfare. But this change is, in my opinion, very dangerous. It contemplates objects with which a federal government ought never to interfere. The concurrent interfering power of laying taxes on the people will occasion a perpetual conflict between the general and individual governments; which, for the reasons I have already mentioned, must terminate to the disadvantage, if not in the annihilation, of the latter. Can it be presumed that the people of America can patiently bear such a double oppression? Is it not to be presumed that they will endeavor to get rid of one of the oppressors? I fear, sir, that it will ultimately end in the establishment of a monarchical government. The people, in order to be delivered from one species of tyranny, may submit to another. I am strongly impressed with the necessity of having a firm national government; but I am decidedly against giving it the power of direct taxation, because I think it endangers our liberties. My attachment to the Union and an energetic government is such, that I would consent to give the general government every power contained in that plan, except that of taxation.

As it will operate on all states and individuals, powers given it generally should be qualified. It may be attributed to the prejudice of my education, but I am a decided and warm friend to a bill of rights — the polar star and great support of American liberty; and I am clearly of opinion

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that the general powers conceded by that plan, such as the impost, &c., should be guarded and checked by a bill of rights.

Permit me to examine the reasoning that admits that all powers not given up are reserved. Apply this. If you give to the United States the power of direct taxation, in making all laws necessary to give it operation, (which is a power given by the last clause in the 8th section of the 1st article,) suppose they should be of opinion that the right of the trial by jury was not one of the requisites to carry it into effect; there is no check in this Constitution to prevent the formal abolition of it. There is a general power given to them to make all laws that will enable them to carry their powers into effect. There are no limits pointed out. They are not restrained or controlled from making any law, however oppressive in its operation, which they may think necessary to carry their powers into effect. By this general, unqualified power, they may infringe not only on the trial by jury, but the liberty of the press, and every right that is not expressly secured or excepted from that general power. I conceive that such general powers are very dangerous. Our great unalienable rights ought to be secured from being destroyed by such unlimited powers, either by a bill of rights, or by an express provision in the body of the Constitution. It is immaterial in which of these two modes rights are secured.

I fear I have tired the patience of the committee; I beg, however, the indulgence of making a few more observations. There is a distinction between this government and ancient and modern ones. The division of power in ancient governments, or in any government at present in the world, was founded on different principles from those of this government. What was the object of the distribution of power in Rome? It will not be controverted, that there was a composition or mixture of aristocracy, democracy, and monarchy, each of which had a repellent quality which enabled it to preserve itself from being destroyed by the other two; so that the balance was continually maintained. This is the case in the English government, which has the most similitude to our own. There they have distinct orders in the government, which possess real, efficient repellent qualities. Let us illustrate it. If the commons prevail, may they not vote the king useless? If the king prevails, will not the com-

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mons lose their liberties? Without the interposition of a check, without a balance, the one would destroy the other. The lords, the third branch, keep up this balance. The wisdom of the English constitution has given a share of legislation to each of the three branches, which enables it effectually to defend itself, and which preserves the liberty of the people of that country.

What is the object of the division of power in America? Why is the government divided into different branches? For a more faithful and regular administration. Where is there a check? We have more to apprehend from the union of these branches than from the subversion of any; and this union will destroy the rights of the people. There is nothing to prevent this coalition; but the contest which will probably subsist between the general government and the individual governments will tend to produce it. There is a division of sovereignty between the national and state governments. How far, then, will they coalesce together? Is it not to be supposed that there will be a conflict between them? If so, will not the members of the former combine together? Where, then, will be the check to prevent encroachments on the rights of the people? There is not a third essentially distinct branch, to preserve a just equilibrium, or to prevent such encroachments. In developing this plan of government, we ought to attend to the necessity of having checks. I can see no real checks in it.

Let us first inquire into the probability of harmony between the general and individual governments; and, in the next place, into the responsibility of the general government, either to the people at large or to the state legislatures. As to the harmony between the governments, communion of powers, legislative and judicial, forbids it.

I have never yet heard or read, in the history of mankind, of a concurrent exercise of power by two parties, without producing a struggle between them. Consult the human heart. Does it not prove that, where two parties, or bodies, seek the same object, there must be a struggle? Now, sir, as to the responsibility. Let us begin with the House of Representatives, which is the most democratic part. The representatives are elected by the people; but what is the responsibility? At the expiration of the time for which they are elected, the people may discontinue them: but if

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they commit high crimes, how are they to be punished? I apprehend the general government cannot punish them, because it would be a subversion of the rights of the people. The state legislatures cannot punish them, because they have no control over them in any one instance. In the next, consider the responsibility of the senators. To whom are they amenable? I apprehend, to none. They are punishable neither by the general government nor by the state legislatures. The latter may call them to an account, but they have no power to punish them.

Let us now consider the reponsibility of the President. He is elected for four years, and not excluded from reëlection. Suppose he violates the laws and Constitution, or commits high crimes. By whom is he to be tried? — By his own council — by those who advise him to commit such violations and crimes? This subverts the principles of justice, as it secures him from punishment. He commands the army of the United States till he is condemned. Will not this be an inducement to foreign nations to use their arts and intrigues to corrupt his counsellors? If he and his counsellors can escape punishment with so much facility, what a delightful prospect must it be for a foreign nation, which may be desirous of gaining territorial or commercial advantages over us, to practise on them! The certainty of success would be equal to the impunity. How is he elected? By electors appointed according to the directions of the state legislatures. Does the plan of government contemplate any other mode? A combination between the electors might easily happen, which would fix on a man in every respect improper. Contemplate this in all its consequences. Is it not the object of foreign courts to have such a man possessed of this power as would be inclined to promote their interests? What an advantageous prospect for France and Great Britain to secure the favor and attachment of the President, by exerting their power and influence to continue him in the office! Foreign nations may, by their intrigues, have great influence, in each state, in the election of the President; and I have no doubt but their efforts will be tried to the utmost. Will not the influence of the President himself have great weight in his reelection? The variety of the offices at his disposal will acquire him the favor and attachment of those who aspire after them, and of the officers and their friends. He will have some

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connection with the members of the different branches of government. They will esteem him, because they will be acquainted with him, live in the same town with him, and often dine with him. This familiar and frequent intercourse will secure him great influence. I presume that when once he is elected, he may be elected forever. Besides his influence in the town where he will reside, he will have very considerable weight in the different states. Those who are acquainted with the human mind, in all its operations, can clearly foresee this. Powerful men in different states will form a friendship with him. For these reasons, I conceive, the same President may always be continued, and be in fact elected by Congress, instead of independent and intelligent electors. It is a misfortune, more than once experienced, that the representatives of the states do not pursue the particular interest of their own state. When we take a more accurate view of the principles of the Senate, we shall have grounds to fear that the interest of our state may be totally neglected; nay, that our legislative influence will be as if we were actually expelled or banished out of Congress. The senators are amenable to, and appointed by, the states. They have a negative on all laws, may originate any except money bills, and direct the affairs of the executive. Seven states are a majority, and can in most cases bind the rest; from which reason, the interest of certain states alone will be consulted. Although the House of Representatives is calculated on national principles, and should they attend (contrary to my expectations) to the general interests of the Union, yet the dangerous exclusive powers given to the Senate will, in my opinion, counterbalance their exertions. Consider the connection of the Senate with the executive. Has it not an authority over all the acts of the executive? What are the acts which the President can do without them? What number is requisite to make treaties? A very small number. Two thirds of those who may *happen* to be present, may, with the President, make treaties that shall sacrifice the dearest interests of the Southern States — which may relinquish part of our territories — which may dismember the United States. There is no check to prevent this; there is no responsibility, or power to punish it. He is to nominate, and, by and with the advice and consent of the Senate, to appoint, ambassadors, other public ministers and consuls,

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judges of the Supreme Court, and all other officers of the United States. The concurrence of a bare majority of those who may be present will enable him to do these important acts. It does not require the consent of two thirds even of those who may be present. Thus I conceive the government is put entirely into the hands of seven states; indeed, into the hands of two thirds of a majority. The executive branch is under their protection, and yet they are freed from a direct charge of combination.

Upon reviewing this government, I must say, under my present impression, I think it a dangerous government, and calculated to secure neither the interests nor the rights of our countrymen. Under such a one, I shall be averse to embark the best hopes and prospects of a free people. We have struggled long to bring about this revolution, by which we enjoy our present freedom and security. Why, then, this haste — this wild precipitation?

I have fatigued the committee; but, as I have not yet said all that I wish upon the subject, I trust I shall be indulged another day.

Mr. JOHN MARSHALL. Mr. Chairman, I conceive that the object of the discussion now before us is, whether democracy or despotism be most eligible. I am sure that those who framed the system submitted to our investigation, and those who now support it, intend the establishment and security of the former. The supporters of the Constitution claim the title of being firm friends of the liberty and the rights of mankind. They say that they consider it as the best means of protecting liberty. We, sir, idolize democracy. Those who oppose it have bestowed eulogiums on monarchy. We prefer this system to any monarchy, because we are convinced that it has a greater tendency to secure our liberty and promote our happiness. We admire it, because we think it a well-regulated democracy. It is recommended to the good people of this country: they are, through us, to declare whether it be such a plan of government as will establish and secure their freedom.

Permit me to attend to what the honorable gentleman (Mr. Henry) has said. He has expatiated on the necessity of a due attention to certain maxims — to certain fundamental principles, from which a free people ought never to depart. I concur with him in the propriety of the ob-

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servance of such maxims. They are necessary in any government, but more essential to a democracy than to any other. What are the favorite maxims of democracy? A strict observance of justice and public faith, and a steady adherence to virtue. These, sir, are the principles of a good government. No mischief, no misfortune, ought to deter us from a strict observance of justice and public faith. Would to Heaven that these principles had been observed under the present government! Had this been the case, the friends of liberty would not be so willing now to part with it. Can we boast that our government is founded on these maxims? Can we pretend to the enjoyment of political freedom or security, when we are told that a man has been, by an act of Assembly, struck out of existence without a trial by jury, without examination, without being confronted with his accusers and witnesses, without the benefits of the law of the land? Where is our safety, when we are told that this act was justifiable because the person was not a Socrates? What has become of the worthy member's maxims? Is this one of them? Shall it be a maxim that a man shall be deprived of his life without the benefit of law? Shall such a deprivation of life be justified by answering, that the man's life was not taken *secundum artem* because he was a bad man? Shall it be a maxim that government ought not to be empowered to protect virtue?

The honorable member, after attempting to vindicate that tyrannical legislative act to which I have been alluding, proceeded to take a view of the dangers to which this country is exposed. He told us that the principal danger arose from a government which, if adopted, would give away the Mississippi. I intended to proceed regularly, by attending to the clause under debate; but I must reply to some observations which were dwelt upon to make impressions on our minds unfavorable to the plan upon the table. Have we no navigation in, or do we derive no benefit from, the Mississippi? How shall we retain it? By retaining that weak government which has hitherto kept it from us? Is it thus that we shall secure that navigation? Give the government the power of retaining it, and then we may hope to derive actual advantages from it. Till we do this, we cannot expect that a government which hitherto has not been able to protect it, will have the power to do it hereafter. Have we

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attended too long to consider whether this government would be able to protect us? Shall we wait for further proofs of its inefficacy? If, on mature consideration, the Constitution will be found to be perfectly right on the subject of treaties, and containing no danger of losing that navigation, will he still object? Will he object because eight states are unwilling to part with it? This is no good ground of objection.

He then stated the necessity and probability of obtaining amendments. This we ought to postpone until we come to that clause, and make up our minds whether there be any thing unsafe in this system. He conceived it impossible to obtain amendments after adopting it. If he was right, does not his own argument prove that, in his own conception, previous amendments cannot be had? for, sir, if subsequent amendments cannot be obtained, shall we get amendments before we ratify? The reasons against the latter do not apply against the former. There are in this state, and in every state in the Union, many who are decided enemies of the Union. Reflect on the probable conduct of such men. What will they do? They will bring amendments which are local in their nature, and which they know will not be accepted. What security have we that other states will not do the same? We are told that many in the states were violently opposed to it. They are more mindful of local interests. They will never propose such amendments as they think would be obtained. Disunion will be their object. This will be attained by the proposal of unreasonable amendments. This, sir, though a strong cause, is not the only one that will militate against previous amendments. Look at the comparative temper of this country now, and when the late federal Convention met. We had no idea then of any particular system. The formation of the most perfect plan was our object and wish. It was imagined that the states would accede to, and be pleased with, the proposition that would be made them. Consider the violence of opinions, the prejudices and animosities which have been since imbibed. Will not these operate greatly against mutual concessions, or a friendly concurrence? This will, however, be taken up more properly at another time. He says, we wish to have a strong, energetic, powerful government. We contend for a well-regulated democracy. He insinuates that the power of the government has been enlarged by the Convention, and

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that we may apprehend it will be enlarged by others The Convention did not, in fact, assume any power.

They have proposed to our consideration a scheme of government which they thought advisable. We are not bound to adopt it, if we disapprove of it. Had not every individual in this community a right to tender that scheme which he thought most conducive to the welfare of his country? Have not several gentlemen already demonstrated that the Convention did not exceed their powers? But the Congress have the power of making bad laws, it seems. The Senate, with the President, he informs us, may make a treaty which shall be disadvantageous to us; and that, if they be not good men, it will not be a good Constitution. I shall ask the worthy member only, if the people at large, and they alone, ought to make laws and treaties? Has any man this in contemplation? You cannot exercise the powers of government personally yourselves. You must trust to agents. If so, will you dispute giving them the power of acting for you, from an existing possibility that they may abuse it? As long as it is impossible for you to transact your business in person, if you repose no confidence in delegates, because there is a possibility of their abusing it, you can have no government; for the power of doing good is inseparable from that of doing some evil.

We may derive from Holland lessons very beneficial to ourselves. Happy that country which can avail itself of the misfortunes of others — which can gain knowledge from that source without fatal experience! What has produced the late disturbances in that country? The want of such a government as is on your table, and having, in some measure, such a one as you are about to part with. The want of proper powers in the government, the consequent deranged and relaxed administration, the violence of contending parties, and inviting foreign powers to interpose in their disputes, have subjected them to all the mischiefs which have interrupted their harmony. I cannot express my astonishment at his high-colored eulogium on such a government. Can any thing be more dissimilar than the relation between the British government and the colonies, and the relation between Congress and the states? We *were not* represented in Parliament. Here we are represented. Argu-

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ments which prove the impropriety of being taxed by Britain, do not hold against the exercise of taxation by Congress.

Let me pay attention to the observation of the gentleman who was last up, that the power of taxation ought not to be given to Congress. This subject requires the undivided attention of this house. This power I think essentially necessary; for without it there will be no efficiency in the government. We have had a sufficient demonstration of the vanity of depending on requisitions. How, then, can the general government exist without this power? The possibility of its being abused is urged as an argument against its expediency. To very little purpose did Virginia discover the defects in the old system; to little purpose, indeed, did she propose improvements; and to no purpose is this plan constructed for the promotion of our happiness, if we refuse it now, because it is possible that it may be abused. The Confederation has nominal powers, but no means to carry them into effect. If a system of government were devised by more than human intelligence, it would not be effectual if the means were not adequate to the power. All delegated powers are liable to be abused. Arguments drawn from this source go in direct opposition to the government, and in recommendation of anarchy. The friends of the Constitution are as tenacious of liberty as its enemies. They wish to give no power that will endanger it. They wish to give the government powers to secure and protect it. Our inquiry here must be, whether the power of taxation be necessary to perform the objects of the Constitution, and whether it be safe, and as well guarded as human wisdom can do it. What are the objects of the national government? To protect the United States, and to promote the general welfare. Protection, in time of war, is one of its principal objects. Until mankind shall cease to have ambition and avarice, wars will arise.

The prosperity and happiness of the people depend on the performance of these great and important duties of the general government. Can these duties be performed by one state? Can one state protect us, and promote our happiness? The honorable gentleman who has gone before me (Governor Randolph) has shown that Virginia cannot do these things. How, then, can they be done? By the national government only. Shall we refuse to give it power to do them?

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We are answered, that the powers may be abused; that, though the Congress may promote our happiness, yet they may prostitute their powers to destroy our liberties. This goes to the destruction of all confidence in agents. Would you believe that men who had merited your highest confidence would deceive you? Would you trust them again after one deception? Why then hesitate to trust the general government? The object of our inquiry is, *Is the power necessary, and is it guarded?* There must be men and money to protect us. How are armies to be raised? Must we not have money for that purpose? But the honorable gentleman says that we need not be afraid of war. Look at history, which has been so often quoted. Look at the great volume of human nature. They will foretell you that a defenceless country cannot be secure. The nature of man forbids us to conclude that we are in no danger from war. The passions of men stimulate them to avail themselves of the weakness of others. The powers of Europe are jealous of us. It is our interest to watch their conduct, and guard against them. They must be pleased with our disunion. If we invite them by our weakness to attack us, will they not do it? If we add debility to our present situation, a partition of America may take place.

It is, then, necessary to give the government that power, in time of peace, which the necessity of war will render indispensable, or else we shall be attacked unprepared. The experience of the world, a knowledge of human nature, and our own particular experience, will confirm this truth. When danger shall come upon us, may we not do what we were on the point of doing once already — that is, appoint a dictator? Were those who are now friends to this Constitution less active in the defence of liberty, on that trying occasion, than those who oppose it? When foreign dangers come, may not the fear of immediate destruction, by foreign enemies, impel us to take a most dangerous step? Where, then, will be our safety? We may now regulate and frame a plan that will enable us to repel attacks, and render a recurrence to dangerous expedients unnecessary. If we be prepared to defend ourselves, there will be little inducement to attack us. But if we defer giving the necessary power to the general government till the moment of danger arrives, we shall give it then, and with an *unsparing hand*. Ameri

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ca, like other nations, may be exposed to war. The propriety of giving this power will be proved by the history of the world, and particularly of modern republics. I defy you to produce a single instance where requisitions on several individual states, composing a confederacy, have been honestly complied with. Did gentlemen expect to see such punctuality complied with in America? If they did, our own experience shows the contrary.

We are told that the Confederation carried us through the war. Had not the enthusiasm of liberty inspired us with unanimity, that system would never have carried us through it. It would have been much sooner terminated had that government been possessed of due energy. The inability of Congress, and the failure of states to comply with the constitutional requisitions, rendered our resistance less efficient than it might have been. The weakness of that government caused troops to be against us which ought to have been on our side, and prevented all resources of the community from being called at once into action. The extreme readiness of the people to make their utmost exertions to ward off solely the pressing danger, supplied the place of requisitions. When they came solely to be depended on, their inutility was fully discovered. A bare sense of duty, or a regard to propriety, is too feeble to induce men to comply with obligations. We deceive ourselves if we expect any efficacy from these. If requisitions will not avail, the government must have the sinews of war some other way. Requisitions cannot be effectual. They will be productive of delay, and will ultimately be inefficient. By direct taxation, the necessities of the government will be supplied in a peaceable manner, without irritating the minds of the people. But requisitions cannot be rendered efficient without a civil war — without great expense of money, and the blood of our citizens. Are there any other means? Yes, that Congress shall apportion the respective quotas previously, and if not complied with by the states, that then this dreaded power shall be exercised. The operation of this has been described by the gentleman who opened the debate. He cannot be answered. This great objection to that system remains unanswered. Is there no other argument which ought to have weight with us on this subject? Delay is a strong and pointed objection to it.

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We are told by the gentleman who spoke last, that direct taxation is unnecessary, because we are not involved in war. This admits the propriety of recurring to direct taxation if we were engaged in war. It has not been proved that we have no dangers to apprehend on this point. What will be the consequence of the system proposed by the worthy gentleman? Suppose the states should refuse!

The worthy gentleman who is so pointedly opposed to the Constitution, proposes remonstrances. Is it a time for Congress to remonstrate, or compel a compliance with requisitions, when the whole wisdom of the Union, and the power of Congress, are opposed to a foreign enemy? Another alternative is, that, if the states shall appropriate certain funds for the use of Congress, Congress shall not lay direct taxes. Suppose the funds appropriated by the states for the use of Congress should be inadequate; it will not be determined whether they be insufficient till after the time at which the quota ought to have been paid; and then, after so long a delay, the means of procuring money, which ought to have been employed in the first instance, must be recurred to. May they not be amused by such ineffectual and temporizing alternatives from year to year, until America shall be enslaved? The failure in one state will authorize a failure in another. The calculation in some states that others will fail, will produce general failures. This will also be attended with all the expenses which we are anxious to avoid. What are the advantages to induce us to embrace this system? If they mean that requisitions should be complied with, it will be the same as if Congress had the power of direct taxation. The same amount will be paid by the people.

It is objected, that Congress will not know how to lay taxes so as to be easy and convenient for the people at large. Let us pay strict attention to this objection. If it appears to be totally without foundation, the necessity of levying direct taxes will obviate what the gentleman says; nor will there be any color for refusing to grant the power.

The objects of direct taxes are well understood: they are but few: what are they? Lands, slaves, stock of all kinds, and a few other articles of domestic property. Can you believe that ten men selected from all parts of the state, chosen because they know the situation of the people, will

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be unable to determine so as to make the tax equal on, and convenient for, the people at large? Does any man believe that they would lay the tax without the aid of other information besides their own knowledge, when they know that the very object for which they are elected is to lay the taxes in a judicious and convenient manner? If they wish to retain the affections of the people at large, will they not inform themselves of every circumstance that can throw light on the subject? Have they but one source of information? Besides their own experience — their knowledge of what will suit their constituents — they will have the benefit of the knowledge and experience of the state legislature. They will see in what manner the legislature of Virginia collects its taxes. Will they be unable to follow their example? The gentlemen who shall be delegated to Congress will have every source of information that the legislatures of the states can have, and can lay the taxes as equally on the people, and with as little oppression, as they can. If, then, it be admitted that they can understand how to lay them equally and conveniently, are we to admit that they will not do it, but that, in violation of every principle that ought to govern men, they will lay them so as to oppress us? What benefit will they have by it? Will it be promotive of their reëlection? Will it be by wantonly imposing hardships and difficulties on the people at large, that they will promote their own interest, and secure their reëlection? To me it appears incontrovertible that they will settle them in such a manner as to be easy for the people. Is the system so organized as to make taxation dangerous? I shall not go to the various checks of the government, but examine whether the immediate representation of the people be well constructed. I conceive its organization to be sufficiently satisfactory to the warmest friend of freedom. No tax can be laid without the consent of the House of Representatives. If there be no impropriety in the mode of electing the representatives, can any danger be apprehended? They are elected by those who can elect representatives in the state legislature. How can the votes of the electors be influenced? By nothing but the character and conduct of the man they vote for. What object can influence them when about choosing him? They have nothing to direct them in the choice but their own good. Have you not as pointed and strong a security as you can possibly have?

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It is a mode that secures an impossibility of being corrupted. If they are to be chosen for their wisdom, virtue, and integrity, what inducement have they to infringe on our freedom? We are told that they may abuse their power. Are there strong motives to prompt them to abuse it? Will not such abuse militate against their own interest? Will not they and their friends feel the effects of iniquitous measures? Does the representative remain in office for life? Does he transmit his title of representative to his son? Is he secured from the burden imposed on the community? To procure their reëlection, it will be necessary for them to confer with the people at large, and convince them that the taxes laid are for their good. If I am able to judge on the subject, the power of taxation now before us is wisely conceded, and the representatives are wisely elected.

The honorable gentleman said that a government should ever depend on the affections of the people. It must be so. It is the best support it can have. This government merits the confidence of the people, and, I make no doubt, will have it. Then he informed us again of the disposition of Spain with respect to the Mississippi, and the conduct of the government with regard to it. To the debility of the Confederation alone may justly be imputed every cause of complaint on this subject. Whenever gentlemen will bring forward their objections, I trust we can prove that no danger to the navigation of that river can arise from the adoption of this Constitution. I beg those gentlemen who may be affected by it, to suspend their judgment till they hear it discussed. Will, says he, the adoption of this Constitution pay our debts? It will compel the states to pay their quotas. Without this, Virginia will be unable to pay. Unless all the states pay, she cannot. Though the states will not coin money, (as we are told,) yet this government will bring forth and proportion all the strength of the Union. That economy and industry are essential to our happiness, will be denied by no man. But the present government will not add to our industry. It takes away the incitements to industry, by rendering property insecure and unprotected. It is the paper on your table that will promote and encourage industry. New Hampshire and Rhode Island have rejected it, he tells us. New Hampshire, if my information be right, will certainly adopt it. The report spread in this country, of

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which I have heard, is, that the representatives of that state having, on meeting, found they were instructed to vote against it, returned to their constituents without determining the question, to convince them of their being mistaken, and of the propriety of adopting it.

The extent of the country is urged as another objection, as being too great for a republican government. This objection has been handed from author to author, and has been certainly misunderstood and misapplied. To what does it owe its source? To observations and criticisms on governments, where representation did not exist. As to the legislative power, was it ever supposed inadequate to any extent? Extent of country may render it difficult to execute the laws, but not to legislate. Extent of country does not extend the power. What will be sufficiently energetic and operative in a small territory, will be feeble when extended over a wide-extended country. The gentleman tells us there are no checks in this plan. What has become of his enthusiastic eulogium on the American spirit? We should find a check and control, when oppressed, from that source. In this country, there is no exclusive personal stock of interest. The interest of the community is blended and inseparably connected with that of the individual. When he promotes his own, he promotes that of the community. When we consult the common good, we consult our own. When he desires such checks as these, he will find them abundantly here. They are the best checks. What has become of his eulogium on the Virginia Constitution? Do the checks in this plan appear less excellent than those of the Constitution of Virginia? If the checks in the Constitution be compared to the checks in the Virginia Constitution, he will find the best security in the former.

The temple of liberty was complete, said he, when the people of England said to their king, that he was their servant. What are we to learn from this? Shall we embrace such a system as that? Is not liberty secure with us, where the people hold all powers in their own hands, and delegate them cautiously, for short periods, to their servants, who are accountable for the smallest mal-administration? Where is the nation that can boast greater security than we do? We want only a system like the paper before you, to strengthen and perpetuate this security.

The honorable gentleman has asked if there be any safety

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or freedom, when we give away the sword and the purse. Shall the people at large hold the sword and the purse without the interposition of their representatives? Can the whole aggregate community act personally? I apprehend that every gentleman will see the impossibility of this Must they, then, not trust them to others? To whom are they to trust them but to their representatives, who are accountable for their conduct? He represents secrecy as unnecessary, and produces the British government as a proof of its inutility. Is there no secrecy there? When deliberating on the propriety of declaring war, or on military arrangements, do they deliberate in the open fields? No, sir. The British government affords secrecy when necessary, and so ought every government. In this plan, secrecy is only used when it would be fatal and pernicious to publish the schemes of government. We are threatened with the loss of our liberties by the possible abuse of power, notwithstanding the maxim, that those who give may take away. It is the people that give power, and can take it back. What shall restrain them? They are the masters who give it, and of whom their servants hold it.

He then argues against the system, because it does not resemble the British government in this — that the same power that declares war has not the means of carrying it on. Are the people of England more secure, if the Commons have no voice in declaring war? or are we less secure by having the Senate joined with the President? It is an absurdity, says the worthy member, that the same man should obey two masters — that the same collector should gather taxes for the general government and the state legislature. Are they not both the servants of the people? Are not Congress and the state legislatures the agents of the people, and are they not to consult the good of the people? May not this be effected by giving the same officer the collection of both taxes? He tells you that it is an absurdity to adopt before you amend. Is the object of your adoption to mend solely? The objects of your adoption are union, safety against foreign enemies, and protection against faction — against what has been the destruction of all republics. These impel you to its adoption. If you adopt it, what shall restrain you from amending it, if, in trying it, amendments shall be found necessary? The government is no:

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supported by force, but depending on our free will. When experience shall show us any inconveniences, we can then correct it. But until we have experience on the subject, amendments, as well as the Constitution itself, are to try. Let us try it, and keep our hands free to change it when necessary. If it be necessary to change government, let us change that government which has been found to be defective. The difficulty we find in amending the Confederation will not be found in amending this Constitution. Any amendments, in the system before you, will not go to a radical change; a plain way is pointed out for the purpose. All will be interested to change it, and therefore all exert themselves in getting the change. There is such a diversity of sentiment in human minds, that it is impossible we shall ever concur in one system till we try it. The power given to the general government over the time, place, and manner of election, is also strongly objected to. When we come to that clause, we can prove it is highly necessary, and not dangerous.

The worthy member has concluded his observations by many eulogiums on the British constitution. It matters not to us whether it be a wise one or not. I think that, for America at least, the government on your table is very much superior to it. I ask you if your House of Representatives would be better than it is, if a hundredth part of the people were to elect a majority of them. If your senators were for life, would they be more agreeable to you? If your President were not accountable to you for his conduct, — if it were a constitutional maxim, that he could do no wrong, — would you be safer than you are now? If you can answer, Yes, to these questions, then adopt the British constitution. If not, then, good as that government may be, this is better. The worthy gentleman who was last up, said the confederacies of ancient and modern times were not similar to ours, and that consequently reasons which applied against them could not be urged against it. Do they not hold out one lesson very useful to us? However unlike in other respects, they resemble it in its total inefficacy. They warn us to shun their calamities, and place in our government those necessary powers, the want of which destroyed them. I hope we shall avail ourselves of their misfortunes, without experiencing them. There was some

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thing peculiar in one observation he made. He said that those who governed the cantons of Switzerland were purchased by foreign powers, which was the cause of their uneasiness and trouble.

How does this apply to us? If we adopt such a government as theirs, will it not be subject to the same inconvenience? Will not the same cause produce the same effect? What shall protect us from it? What is our security? He then proceeded to say, the causes of war are removed from us; that we are separated by the sea from the powers of Europe, and need not be alarmed. Sir, the sea makes them neighbors to us. Though an immense ocean divides us, we may speedily see them with us. What dangers may we not apprehend to our commerce! Does not our naval weakness invite an attack on our commerce? May not the Algerines seize our vessels? Cannot they, and every other predatory or maritime nation, pillage our ships and destroy our commerce, without subjecting themselves to any inconvenience? He would, he said, give the general government all necessary powers. If any thing be necessary, it must be so to call forth the strength of the Union when we may be attacked, or when the general purposes of America require it. The worthy gentleman then proceeded to show, that our present exigencies are greater than they will ever be again.

Who can penetrate into futurity? How can any man pretend to say that our future exigencies will be less than our present? The exigencies of nations have been generally commensurate to their resources. It would be the utmost impolicy to trust to a mere possibility of not being attacked, or obliged to exert the strength of the community. He then spoke of a selection of particular objects by Congress, which he says must necessarily be oppressive; that Congress, for instance, might select taxes, and that all but landholders would escape. Cannot Congress regulate the taxes so as to be equal on all parts of the community? Where is the absurdity of having thirteen revenues? Will they clash with, or injure, each other? If not, why cannot Congress make thirteen distinct laws, and impose the taxes on the general objects of taxation in each state, so as that all persons of the society shall pay equally, as they ought?

He then told you that your Continental government will

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call forth the virtue and talents of America. This being the case, will they encroach on the power of the state governments? Will our most virtuous and able citizens wantonly attempt to destroy the liberty of the people? Will the most virtuous act the most wickedly? I differ in opinion from the worthy gentleman. I think the virtue and talents of the members of the general government will tend to the security, instead of the destruction, of our liberty. I think that the power of direct taxation is essential to the existence of the general government, and that it is safe to grant it. If this power be not necessary, and as safe from abuse as any delegated power can possibly be, then I say that the plan before you is unnecessary; for it imports not what system we have, unless it have the power of protecting us in time of peace and war.

Mr. HARRISON then addressed the chair, but spoke so low that he could not be distinctly heard. He observed, that the accusation of the General Assembly, with respect to Josiah Phillips, was very unjust; that he was a man who, by the laws of nations, was entitled to no privilege of trial, &c.; that the Assembly had uniformly been lenient and moderate in their measures; and that, as the debates of this Convention would probably be published, he thought it very unwarrantable to utter expressions here which might induce the world to believe that the Assembly of Virginia had committed murder. He added some observations on the plan of government; that it certainly would operate an infringement of the rights and liberties of the people; that he was amazed that gentlemen should attempt to misrepresent facts to persuade the Convention to adopt such a system; and that he trusted they would not ratify it as it then stood.

Mr. GEORGE NICHOLAS, in reply to Mr. Harrison, observed, that the turpitude of a man's character was not a sufficient reason to deprive him of his life without a trial; that such a doctrine as that was a subversion of every shadow of freedom; that a fair trial was necessary to determine whether accusations against men's characters were well-founded or not; and that no person would be safe, were it once adopted as a maxim, that a man might be condemned without a trial. Mr. Nicholas then proceeded: Although we have sat eight days, so little has been done, that we have hardly begun to discuss the question regularly. The rule

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of the house to proceed clause by clause has been violated. Instead of doing this, gentlemen alarm us by declamations without reason or argument — by bold assertions that we are going to sacrifice our liberties. It is a fact known to many members within my hearing, that several members have tried their interest without doors to induce others to oppose this system. Every local interest that could affect their minds has been operated upon.

Can it be supposed that gentlemen elected, for their ability and integrity, to represent the people of Virginia in this Convention, to determine on this important question, whether or not we shall be connected with the other states in the Union — can it be thought, I say, that gentlemen in a situation like this will be influenced by motives like these? An answer which has been given is, that, if this Constitution be adopted, the western countries will be lost. It is better that a few countries should be lost, than all America. But, sir, no such consequence can follow from its adoption. They will be much more secure than they are at present. This Constitution, sir, will secure the equal liberty and happiness of all. It will do immortal honor to the gentlemen who formed it. I shall show the inconsistency of the gentleman who entertained us so long, (Mr. Henry.) He insisted that subsequent amendments would go to a dissolution of the Union; that Massachusetts was opposed to it in its present state. Massachusetts has absolutely ratified it, and has gone further, and said that such and such amendments shall be proposed by their representatives.

But such was the attachment of that respectable state to the Union, that, even at that early period, she ratified it unconditionally, and depended on the probability of obtaining amendments hereafter. Can this be a dissolution of the Union? Does this indicate an aversion to the Union on the part of that state? or can an imitation of her conduct injure us? He tells us that our present government is strong. How can that government be strong which depends on humble supplications for its support? Does a government which is dependent for its existence on others, and which is unable to afford protection to the people, deserve to be continued? But the honorable gentleman has no objections to see little storms in republics; they may be useful in the political as well as in the natural world. Every thing the great Creator

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has ordained in the natural world is founded on consummate wisdom: but let him tell us what advantages convulsions, dissensions, and bloodshed, will produce in the political world. Can disunion be the means of securing the happiness of the people in this political hemisphere? The worthy member has enlarged on our bill of rights.

Let us see whether his encomiums on the bill of rights be consistent with his other arguments. Our declaration of rights says that all men are by nature equally free and independent. How comes the gentleman to reconcile himself to a government wherein there are an hereditary monarch and nobility? He objects to this change, although our present federal system is totally without energy. He objects to this system, because he says it will prostrate your bill of rights. Does not the bill of rights tell you that a majority of the community have an indubitable right to alter any government which shall be found inadequate to the security of the public happiness? Does it not say "that no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles"? Have not the inadequacy of the present system, and repeated flagrant violations of justice, and the other principles recommended by the bill of rights, been amply proved? As this plan of government will promote our happiness and establish justice, will not its adoption be justified by the very principles of your bill of rights?

But he has touched on a string which will have great effect. The western country is not safe if this plan be adopted. What do they stand in need of? Do they want protection from enemies? The present weak government cannot protect them. But the exercise of the congressional powers, proposed by this Constitution, will afford them ample security, because the general government can command the whole strength of the Union, to protect any particular part. There is another point wherein this government will set them right. I mean the western posts. This is a subject with which every gentleman here is acquainted. They have been withheld from us, since the peace, by the British. The violation of the treaty on our part authorizes this detention in some degree. The answer of the British minister to our demand of surrendering the posts was, that, as soon as

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America should show a disposition to comply with the treaty on her part, Great Britain would do the same. By this Constitution, treaties will be the supreme law of the land. The adoption of it, therefore, is the only chance we have of getting the western posts.

As to the navigation of the Mississippi, it is one of the most unalienable rights of the people, and which ought to be relinquished on no consideration. The strength of the western people is not adequate to its retention and enjoyment. They can receive no aid from the Confederation. This navigation can only be secured by one of two ways—by force or by treaty. As to force, I apprehend that the new government will be much more likely to hold it than the old. It will be also more likely to retain it be means of treaties; because, as it will be more powerful and respectable, it will be more feared; and as they will have more power to injure Spain, Spain will be more inclined to do them justice, by yielding it, or by giving them an adequate compensation.

It was said that France and Spain would not be pleased to see the United States united in one great empire. Shall we remain feeble and contemptible to please them? Shall we reject our own interest to protect theirs? We shall be more able to discharge our engagements. This may be agreeable to them. There are many strong reasons to expect that the adoption of this system will be beneficial to the back country, and that their interest will be much better attended to under the new than under the old government. There are checks in this Constitution which will render the navigation of the Mississippi safer than it was under the Confederation. There is a clause which, in my opinion, will prohibit the general government from relinquishing that navigation. The 5th clause of the 9th section of the 1st article provides "that no preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another." If Congress be expressly prohibited to give preference to the ports of one state over those of another, there is a strong implication that they cannot give preference to the ports of any foreign nation over those of a state. This will render it unconstitutional to give Spain a preference to the western country in the navigation of that river. They may say that this is a constrained construction, but it appears to me rational. It would be a violation of true policy to give such a

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preference. It would be a departure from natural construction to suppose that an advantage withheld from the states should be given to a foreign nation.

Under the Confederation, Congress cannot make a treaty without the consent of nine states. Congress, by the proposed plan, cannot make a treaty without the consent of two thirds of the senators present, and of the President. Two thirds will amount to nine states, if the senators from all the states be present. Can it be candidly and fairly supposed that they will not all, or nearly all, be present when so important a subject as a treaty is to be agitated? The consent of the President is a very great security. He is elected by the people at large. He will not have the local interests which the members of Congress may have. If he deviates from his duty, he is responsible to his constituents. He will be degraded, and will bring on his head the accusation of the representatives of the people — an accusation which has ever been, and always will be, very formidable. He will be absolutely disqualified to hold any place of profit, honor, or trust, and liable to further punishment if he has committed such high crimes as are punishable at common law. From the summit of honor and esteem he will be precipitated to the lowest infamy and disgrace. Although the representatives have no immediate agency in treaties, yet, from their influence in the government, they will direct every thing. They will be a considerable check on the Senate and President. Those from small states will be particularly attentive, to prevent a sacrifice of territory.

The people of New England have lately purchased great quantities of lands in the western country. Great numbers of them have moved thither. Every one has left his friends, relations, and acquaintances, behind him. This will prevent those states from adopting a measure that would so greatly tend to the injury of their friends. Has not Virginia, in the most explicit terms, asserted her right to that navigation? Can she ever enjoy it under so feeble a government as the present? This is one reason why she should assent to ratify this system. A strong argument offered by the gentleman last up, against the concession of direct taxation, is, that the back lands and impost will be sufficient for all the exigencies of government, and calculates the impost as a considerable amount. The impost will be affected by this business. The

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navigation of that river will increase the impost. Are not the United States as much interested as the people of Kentucky to retain that navigation? Congress will have as much interest in it as any inhabitant of that country, and must exert themselves for it. Kentucky will have taxes to pay.

How can they pay them without navigation? It will be to their interest to have it in their power to navigate the Mississippi, and raise money by imposts. It will be to the interest of all the states, as it will increase the general resources of the united community. Considering Kentucky as an independent state, she will, under the present system, and without the navigation of that river, be furnished with the articles of her consumption through the medium of the importing states. She will, therefore, be taxed by every importing state. If the new Constitution takes place, the amounts of duties on imported articles will go into the general treasury, by which means Kentucky will participate an equal advantage with the importing states. It will, then, be clearly to the advantage of the inhabitants of that country that it should take place. He tells us that he prays for union. What kind of union? A union of the whole, I suppose, if it could be got on his terms. If on such terms, he will adopt it. If not, he will recur to partial confederacies. He will attempt amendments. If he cannot obtain them, then he will choose a partial confederacy. Now, I beg every gentleman in this committee, who would not sacrifice the union, to attend to the situation in which they are about to place themselves.

I beg gentlemen seriously to reflect on this important business. They say amendments may be previously obtained, but acknowledged to be difficult. Will you join in an opposition that so directly tends to disunion? Can any member here think of disunion, or a partial confederacy, without horror? Yet both are expressly preferred to union, unless this system be amended previously. But, says the worthy member, why should not previous amendments be obtained? Will they not be agreed to, as the eight adopting states are friends to the union? But what follows? If they are so, they will agree to subsequent amendments. If you recommend alterations after ratifying, the friendship of the adopting states to the union, and the desires of several of them to have amendments, will lead them to gratify every

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reasonable proposal. By this means you secure the government and union. But if you reject the Constitution, and say you must have alterations as the previous condition of adoption, you sacrifice the union, and all the valuable parts of it.

Can we trust, says he, our liberty to the President — to the Senate — to the House of Representatives? We do not trust our liberty to a particular branch: one branch has not the whole power. One branch is a check on the other. The representatives have a controlling power over the whole. He then told us that republican borderers are not disposed to quarrels. This controverts the uniform evidence of history. I refer the gentleman to the history of Greece. Were not the republics of that country, which bordered on one another, almost perpetually at war? Their confederated republics, as long as they were united, were continually torn by domestic factions. This was the case with the Amphictyons. They called to their assistance the Macedonian monarch, and were subjected themselves by that very prince. This was the fate of the other Grecian republics. Dissensions among themselves rendered it necessary for them to call for foreign aid, and this expedient ultimately ended in their own subjugation. This proves the absolute necessity of the union.

There is a country which affords strong examples, which may be of great utility to us: I mean Great Britain. England, before it was united to Scotland, was almost constantly at war with that part of the island. The inhabitants of the north and south parts of the same island were more bitter enemies to one another than to the nations on the Continent. England and Scotland were more bitter enemies, before the union, than England and France have ever been, before or since. Their hatred and animosities were stimulated by the interference of other nations. Since the union, both countries have enjoyed domestic tranquillity, the greatest part of the time, and both countries have been greatly benefited by it. This is a convincing proof that union is necessary for America, and that partial confederacies would be productive of endless dissensions, and unceasing hostilities between the different parts.

The gentleman relies much on the force of requisitions. I shall mention two examples which will show their inutility.

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They are fruitless without the coercion of arms. If large states refuse, a complete civil war, or dissolution of the confederacy, will result. If small states refuse, they will be destroyed, or obliged to comply. From the history of the United Netherlands, the inutility of requisitions, without recurring to force, may be proved. The small provinces refused to comply. Holland, the most powerful, marched into their territories with an army, and compelled them to pay. The other example is from the New England confederacy. Massachusetts, the most wealthy and populous state, refused to contribute her share. The rest were unable to compel her, and the league was dissolved. Attend to a resolution of the Assembly of Virginia in the year 1784.

[Here Mr. Nicholas read a resolution of that year, to enable Congress to compel a compliance with requisitions.]

I am sure that the gentleman recognizes his child. Is not this a conclusive evidence of the utter inefficacy of requisitions? This expedient of coercion is a dreadful alternative. It confounds those who are innocent, and willing to pay, with those who refuse. How are they to be discriminated, if a state is to be attacked for the refusal of its legislature? I am sure there is not a man in the committee who does not see the impolicy and danger of such an expedient.

We are next terrified with the thought of excises. In some countries excises are terrible. In others, they are not only harmless, but useful. In our sister states, they are excised without any inconvenience. They are a kind of tax on manufactures. Our manufactures are few in proportion to those of other states. We may be assured that Congress will make such regulations as shall make excises convenient and easy for the people.

Another argument made use of is, that ours is the largest state, and must pay in proportion to the other states. How does that appear? The proportion of taxes are fixed by the number of inhabitants, and not regulated by the extent of territory, or fertility of soil. If we be wealthier, in proportion, than other states, it will fall lighter upon us than upon poorer states. They must fix the taxes so that the poorest states can pay; and Virginia, being richer, will bear it easier.

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The honorable gentleman says that the first collections are to go to Congress, and that the state legislatures must bear all deficiencies. How does this appear? Does he prove it? Nothing of it appears in the plan itself. The Congress and the state legislatures have concurrent jurisdictions in laying and collecting taxes. There is no rule that shows that Congress shall have the first collections. Each is independent of the other.

Another argument against this disingenuous construction is drawn from that clause which regulates representation, which is conclusive from the words themselves: "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers." Each state will know, from its population, its proportion of any general tax. As it was justly observed by the gentleman over the way, (Mr. Randolph,) they cannot possibly exceed that proportion: they are limited and restrained expressly to it. The state legislatures have no check of this kind. Their power is uncontrolled. This excludes the danger of interference. Each collects its own taxes, and bears its own deficiencies; and officers are accountable to each government for the different collections.

I deny, on my part, what he says with respect to the general welfare. He tells you that, under pretence of providing for the general welfare, they may lay the most enormous taxes. There is nothing in the clause which warrants this suggestion.

It provides "that Congress shall have the power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare, of the United States." The debts of the Union ought to be paid. Ought not the common defence to be provided for? Is it not necessary to provide for the general welfare? It has been fully proved that this power could not be given to another body. The amounts to be raised are confined to these purposes solely. Will oppressive burdens be warranted by this clause? They are not to raise money for any other purpose. It is a power which is drawn from his favorite Confederation, the 8th article of which provides "that all charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out

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of a common treasury, which shall be supplied by the several states, in proportion to the value of all lands, within each state, granted to or surveyed for any person, as such land, and the building and improvement thereon, shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint.

"The taxes for paying that proportion shall be laid and levied, by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States, in Congress assembled." Now, sir, by a comparison of this article with the clause in the Constitution, we shall find them to be nearly the same. The common defence and general welfare are the objects expressly mentioned to be provided for, in both systems. The power in the Confederation to secure and provide for those objects was constitutionally unlimited. The requisitions of Congress are binding on the states, though, from the imbecility of their nature, they cannot be enforced. The same power is intended by the Constitution. The only difference between them is, that Congress is, by this plan, to impose the taxes on the people, whereas, by the Confederation, they are laid by the states. The amount to be raised, and the power given to raise it, is the same in principle. The mode of raising only is different, and this difference is founded on the necessity of giving the government that energy without which it cannot exist. The power has not been reprobated in the Confederation. It ought not to be blamed in the proposed plan of government.

The gentleman has adverted to what he calls the *sweeping clause*, &c., and represents it as replete with great dangers. This dreaded clause runs in the following words: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." The committee will perceive that the Constitution had enumerated all the powers which the general government should have, but did not say how they were to be exercised. It therefore, in this clause, tells how they shall be exercised. Does this give any new power? I say not. Suppose it had been inserted, at the end of every power, that they should have power to make laws to carry that power into execution; would this have increased their powers? If, therefore, it

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could not have increased their powers, if placed at the end of each power, it cannot increase them at the end of all. This clause only enables them to carry into execution the powers given to them, but gives them no additional power.

But it is objected to for want of a bill of rights. It is a principle universally agreed upon, that all powers not given are retained. Where, by the Constitution, the general government has general powers for any purpose, its powers are absolute. Where it has powers with some exceptions, they are absolute only as to those exceptions. In either case, the people retain what is not conferred on the general government, as it is by their positive grant that it has any of its powers. In England, in all disputes between the king and people, recurrence is had to the enumerated rights of the people, to determine. Are the rights in dispute secured? Are they included in Magna Charta, Bill of Rights, &c.? If not, they are, generally speaking, within the king's prerogative. In disputes between Congress and the people, the reverse of the proposition holds. Is the disputed right enumerated? If not, Congress cannot meddle with it.

Which is the most safe? The people of America know what they have relinquished for certain purposes. They also know that they retain every thing else, and have a right to resume what they have given up, if it be perverted from its intended object. The king's prerogative is general, with certain exceptions. The people are, therefore, less secure than we are. Magna Charta, Bill of Rights, &c., secure their liberty. Our Constitution itself contains an English Bill of Rights. The English Bill of Rights declares that Parliaments shall be held frequently. Our Constitution says that Congress shall sit annually. The English Declaration of Rights provides that no laws shall be suspended. The Constitution provides that no laws shall be suspended, except one, and that in time of rebellion or invasion, which is the writ of *habeas corpus*. The Declaration of Rights says that there should be no army in time of peace without the consent of Parliament. Here we cannot have an army even in time of war, with the approbation of our representatives, for more than two years.

The liberty of the press is secured. What secures it in England? Is it secured by Magna Charta, the Declaration of Rights, or by any other express provision? It is not. They have no express security for the liberty of the press.

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They have a reliance on Parliament for its protection and security. In the time of King William, there passed an act for licensing the press. That was repealed. Since that time, it has been looked upon as safe. The people have depended on their representatives. They will not consent to pass an act to infringe it, because such an act would irritate the nation. It is equally secure with us. As to the trial by jury, consider in what situation it is by the state Constitution. It is not on a better footing. It is by implication under the control of the legislature, because it has left particular cases to be decided by the legislature. Here it is secured in criminal cases, and left to the legislatures in civil cases. One instance will prove the evil tendency of fixing it in the Constitution. It will extend to all cases. Causes in chancery, which, strictly speaking, never are, nor can be, well tried by a jury, would then be tried by that mode, and could not be altered, though found to be inconvenient.

But taxes are to be increased, we are told. I think they will not. I am clearly of opinion that the deduction in the civil list of the states will be equal to the increase of that of the general government. Then the increase of custom-house officers is dreaded. The present custom-house officers will be sufficient in the hands of Congress; so that as much as economy will take place, so far the revenues will be increased. Mr. Nicholas concluded by making a few observations on the general structure of the government, and its probable happy operation. He said that it was a government calculated to suit almost any extent of territory. He then quoted the opinion of the celebrated Montesquieu, from vol. i., book 9, where that writer speaks of a confederate republic as the only safe means of extending the sphere of a republican government to any considerable degree.

WEDNESDAY, *June* 11, 1788.

[The 1st and 2d sections still under consideration.]

Mr. MADISON. Mr. Chairman, it was my purpose to resume, before now, what I had left unfinished concerning the necessity of a radical change of our system. The intermission which has taken place discontinued the progress of the argument, and has given opportunity to others to advance arguments on different parts of the plan. I hope we shall

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steer our course in a different manner from what we have hitherto done. I presume that vague discourses and mere sports of fancy, not relative to the subject at all, are very improper on this interesting occasion. I hope these will be no longer attempted, but that we shall come to the point. I trust we shall not go out of order, but confine ourselves to the clause under consideration. I beg gentlemen would observe this rule. I shall endeavor not to depart from it myself.

The subject of direct taxation is perhaps one of the most important that can possibly engage our attention, or that can be involved in the discussion of this question. If it be to be judged by the comments made upon it, by the opposers and favorers of the proposed system, it requires a most clear and critical investigation. The objections against the exercise of this power by the general government, as far as I am able to comprehend them, are founded upon the supposition of its being unnecessary, impracticable, unsafe, and accumulative of expense. I shall therefore consider, 1st, how far it may be necessary; 2d, how far it may be practicable; 3d, how far it may be safe, as well with respect to the public liberty at large, as to the state legislatures; and 4th, with respect to economy. First, then, is it necessary? I must acknowledge that I concur in opinion with those gentlemen who told you that this branch of revenue was essential to the salvation of the Union. It appears to me necessary, in order to secure that punctuality which is necessary in revenue matters. Without punctuality, individuals will give it no confidence, without which it cannot get resources. I beg gentlemen to consider the situation of this country, if unhappily the government were to be deprived of this power. Let us suppose, for a moment, that one of those powers which may be unfriendly to us should take advantage of our weakness, which they will be more ready to do when they know the want of this resource in our government. Suppose it should attack us; what forces could we oppose to it? Could we find safety in such forces as we could call out? Could we call forth a sufficient number, either by draughts, or any other way, to repel a powerful enemy? The inability of the government to raise and support regular troops would compel us to depend on militia.

It would be then necessary to give this power to the govern-

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ment, or run the risk of national annihilation. It is my firm belief that, if a hostile attack were made this moment on the United States, it would flash conviction on the minds of the citizens of the United States of the necessity of vesting the government with this power, which alone can enable it to protect the community. I do not wish to frighten the members into a concession of this power, but to bring to their minds those considerations which demonstrate its necessity. If we were secured from the possibility, or probability, of danger, it might be unnecessary. I shall not review that concourse of dangers which may probably arise at remote periods of futurity, nor all those which we have immediately to apprehend, for this would lead me beyond the bounds which I prescribed myself. But I will mention one single consideration, drawn from fact itself. I hope to have your attention.

By the treaty between the United States and his most Christian majesty, among other things, it is stipulated that the great principle on which the armed neutrality in Europe was founded should prevail in case of future wars. The principle is this — that free ships shall make free goods, and that vessels and goods shall be both free from condemnation. Great Britain did not recognize it. While all Europe was against her, she held out without acting on it. It has been considered, for some time past, that the flames of war, already kindled, would spread, and that France and England were likely to draw those swords which were so recently put up. This is judged probable. We should not be surprised, in a short time, to consider ourselves as a neutral nation — France on one side, and Great Britain on the other. What is the situation of America? She is remote from Europe, and ought not to engage in her politics or wars. The American vessels, if they can do it with advantage, may carry on the commerce of the contending nations. It is a source of wealth which we ought not to deny to our citizens. But, sir, is there not infinite danger that, in despite of all our caution, we shall be drawn into the war? If American vessels have French property on board, Great Britain will seize them. By this means we shall be obliged to relinquish the advantage of a neutral nation, or be engaged in a war.

A neutral nation ought to be respectable, or else it will be insulted and attacked. America, in her present impotent situation, would run the risk of being drawn in as a party in

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the war, and lose the advantage of being neutral. Should it happen that the British fleet should be superior, have we not reason to conclude, from the spirit displayed by that nation to us and to all the world, that we should be insulted in our own ports, and our vessels seized? But if we be in a respectable situation, if it be known that our government can command the whole resources of the Union, we shall be suffered to enjoy the great advantages of carrying on the commerce of the nations at war; for none of them would be willing to add us to the number of their enemies. I shall say no more on this point, there being others which merit your consideration.

The expedient proposed by the gentlemen opposed to this clause is, that requisitions shall be made, and, if not complied with in a certain time, that then taxation shall be recurred to. I am clearly convinced that, whenever requisitions shall be made, they will disappoint those who put their trust in them. One reason to prevent the concurrent exertions of all the states, will arise from the suspicion, in some states, of delinquency in others. States will be governed by the motives that actuate individuals.

When a tax is in operation in a particular state, every citizen, if he knows the energy of the laws to enforce payment, and that every other citizen is performing his duty, will cheerfully discharge his duty; but were it known that the citizens of one district were not performing their duty, and that it was left to the policy of the government to make them come up with it, the other districts would be very supine and careless in making provisions for payment. Our own experience makes the illustration more natural. If requisitions be made on thirteen different states, when one deliberates on the subject, she will know that all the rest will deliberate upon it also. This, sir, has been a principal cause of the inefficacy of requisitions heretofore, and will hereafter produce the same evil. If the legislatures are to deliberate on this subject, (and the honorable gentleman opposed to this clause thinks their deliberation necessary,) is it not presumable that they will consider peculiar local circumstances? In the general council, on the contrary, the sense of all America would be drawn to a single point. The collective interest of the Union at large will be known and pursued. No local views will be permitted to operate against the general welfare.

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But when propositions would come before a particular state, there is every reason to believe that qualifications of the requisitions would be proposed; compliance might be promised, and some instant remittances might be made. This will cause delays, which, in the first instance, will produce disappointment. This also will make failures everywhere else. This, I hope, will be considered with the attention it deserves. The public creditors will be disappointed, and more pressing. Requisitions will be made for purposes equally pervading all America; but the exertions to make compliances will probably be not uniform in the states. If requisitions be made for future occasions, for putting the states in a state of military defence, or to repel an invasion, will the exertions be uniform and equal in all the states? Some parts of the United States are more exposed than others. Will the least exposed states exert themselves equally? We know that the most exposed will be the more immediately interested, and will make less sacrifices in making exertions. I beg gentlemen to consider that this argument will apply with most effect to the states which are most defenceless and exposed. The Southern States are most exposed, whether we consider their situation, or the smallness of their population. And there are other circumstances which render them still more vulnerable, which do not apply to the Northern States. They are therefore more interested in giving the government a power to command the whole strength of the Union in cases of emergency. Do not gentlemen conceive this mode of obtaining supplies from the states will keep alive animosities between the general government and particular states? Where the chances of failures are so numerous as thirteen, by the thirteen states, disappointment in the first place, and consequent animosity, must inevitably take place.

Let us consider the alternatives proposed by gentlemen, instead of the power of laying direct taxes. After the states shall have refused to comply, weigh the consequences of the exercise of this power by Congress. When it comes in the form of a punishment, great clamors will be raised among the people against the government; hatred will be excited against it. It will be considered as an ignominious stigma on the state. It will be considered, at least, in this light by

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the state where the failure is made, and these sentiments will no doubt be diffused through the other states. Now, let us consider the effect, if collectors are sent where the state governments refuse to comply with requisitions. It is too much the disposition of mankind not to stop at one violation of duty. I conceive that every requisition that will be made on my part of America will kindle a contention between the delinquent member and the general government. Is there no reason to suppose divisions in the government (for seldom does any thing pass with unanimity) on the subject of requisitions? The parts least exposed will oppose those measures which may be adopted for the defence of the weakest parts. Is there no reason to presume that the representatives from the delinquent state will be more likely to foster disobedience to the requisitions of the government than study to recommend them to the public?

There is, in my opinion, another point of view in which this alternative will produce great evil. I will suppose, what is very probable, that partial compliances will be made. A difficulty here arises which fully demonstrates its impolicy. If a part be paid, and the rest withheld, how is the general government to proceed? They are to impose a tax; but how shall it be done in this case? Are they to impose it, by way of punishment, on those who have paid, as well as those who have not? All these considerations taken into view (for they are not visionary or fanciful speculations) will, perhaps, produce this consequence: The general government, to avoid those disappointments which I first described, and to avoid the contentions and embarrassments which I last described, will, in all probability, throw the public burdens on those branches of revenue which will be more in their power. They will be continually necessitated to augment the imposts. If we throw a disproportion of the burdens on that side, shall we not discourage commerce and suffer many political evils? Shall we not increase that disproportion on the Southern States, which for some time will operate against us? The Southern States, from having fewer manufactures, will import and consume more. They will therefore pay more of the imposts. The more commerce is burdened, the more the disproportion will operate against them. If direct taxation be mixed with other taxes, it will be in the power

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of the general government to lessen that inequality But this inequality will be increased to the utmost extent, if the general government have not this power.

There is another point of view in which this subjec affords us instruction. The imports will decrease in time of war. The honorable gentleman who spoke yesterday said that the imposts would be so productive that there would be no occasion of laying taxes. I will submit two observations to him and the committee. First, in time of war, the imposts will be less; and as I hope we are considering a government for a perpetual duration, we ought to provide for every future contingency. At present, our importations bear a full proportion to the full amount of our sales, and to the number of our inhabitants; but when we have inhabitants enough, our imposts will decrease, and as the national demands will increase with our population, our resources will increase as our wants increase. The other consideration which I will submit on this part of the subject is this: I believe that it will be found, in practice, that those who fix the public burdens will feel a greater degree of responsibility, when they are to impose them on the citizens immediately than if they were to say what sum should be paid by the states. If they exceed the limits of propriety, universal discontent and clamor will arise. Let us suppose they were to collect the taxes from the citizens of America; would they not consider their circumstances? Would they not attentively consider what could be done by the citizens at large? Were they to exceed, in their demands, what were reasonable burdens, the people would impute it to the right source, and look on the imposers as odious.

When I consider the nature of the various objections brought against this clause, I should be led to think that the difficulties were such that gentlemen would not be able to get over them, and that the power, as defined in the plan of the Convention, was impracticable. I shall trouble them with a few observations on that point.

It has been said that ten men deputed from this state, and others in proportion from other states, will not be able to adjust direct taxes, so as to accommodate the various citizens in thirteen states.

I confess I do not see the force of this observation. Could not ten intelligent men, chosen from ten districts from this

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state, lay direct taxes on a few objects in the most judicious manner? It is to be conceived that they would be acquainted with the situation of different citizens of this country. Can any one divide this state into ten districts so as not to contain men of sufficient information? Could not one man of knowledge be found in a district? When thus selected, will they not be able to carry their knowledge into the general council? I may say, with great propriety, that the experience of our own legislature demonstrates the competency of Congress to lay taxes wisely. Our Assembly consists of considerably more than a hundred; yet, from the nature of the business, it devolves on a much smaller number. It is, through their sanction, approved of by all the others. It will be found that there are seldom more than ten men who rise to high information on this subject. Our federal representatives, as has been said by the gentleman, (Mr. Marshall,) who entered into the subject with a great deal of ability, will get information from the state governments. They will be perfectly well informed of the circumstances of the people of the different states, and the mode of taxation that would be most convenient for them, from the laws of the states. In laying taxes, they may even refer to the state system of taxation. Let it not be forgotten that there is a probability that that ignorance which is complained of in some parts of America will be continually diminishing. Let us compare the degree of knowledge which the people had in time past to their present information. Does not our own experience teach us that the people are better informed than they were a few years ago? The citizen of Georgia knows more now of the affairs of New Hampshire, than he did, before the revolution, of those of South Carolina. When the representatives from the different states are collected together, to consider this subject, they will interchange their knowledge with one another, and will have the laws of each state on the table. Besides this, the intercourse of the states will be continually increasing. It is now much greater than before the revolution. My honorable friend over the way, (Mr. Monroe,) yesterday, seemed to conceive, as an insuperable objection, that, if land were made the particular object of taxation, it would be unjust, as it would exonerate the commercial part of the community; that, if it were laid on trade, it would

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be unjust, in discharging the landholders; and that any exclusive selection would be unequal and unfair. If the general government were tied down to one object, I confess the objection would have some force in it. But if this be not the case, it can have no weight. If it should have a general power of taxation, they could select the most proper objects, and distribute the taxes in such a manner as that they should fall in a due degree on every member of the community. They will be limited to fix the proportion of each state, and they must raise it in the most convenient and satisfactory manner to the public.

The honorable member considered it as another insuperable objection, that uniform laws could not be made for thirteen states, and that dissonance would produce inconvenience and oppression. Perhaps it may not be found, on due inquiry, to be so impracticable as he supposes. But were it so, where is the evil for different states to raise money for the general government? Where is the evil of such laws? There are instances in other countries of different laws operating in different parts of the country, without producing any kind of opposition. The revenue laws are different in England and Scotland in several respects. Their laws relating to customs, excises, and trade, are similar; but those respecting direct taxation are dissimilar. There is a land tax in England, and a land tax in Scotland; but the laws concerning them are not the same. It is much heavier, in proportion, in the former than in the latter. The mode of collection is different; yet this is not productive of any national inconvenience. Were we to conclude, from the objections, against the proposed plan, this dissimilarity, in that point alone, would have involved those kingdoms in difficulties. In England itself, there is a variety of different laws operating differently in different places.

I will make another observation on the objection of my honorable friend. He seemed to conclude that concurrent collections under different authorities were not reducible to practice. I agree that, were they independent of the people, the argument would be good. But they must serve one common master. They must act in concert, or the defaulting party must bring on itself the resentment of the people. If the general government be so constructed that it will not dare to impose such burdens as will distress the people, where

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is the evil of its having a power of taxation concurrent with the states? The people would not support it, were it to impose oppressive burdens. Let me make one more comparison of the state governments to this plan. Do not the states impose taxes for local purposes? Does the concurrent collection of taxes, imposed by the legislatures for general purposes, and of levies laid by the counties for parochial and county purposes, produce any inconvenience or oppression? The collection of these taxes is perfectly practicable, and consistent with the views of both parties. The people at large are the common superior of the state governments and the general government. It is reasonable to conclude that they will avoid interferences, for two causes — to avoid public oppression, and to render the collections more productive. I conceive they will be more likely to produce disputes, in rendering it convenient for the people, than to run into interfering regulations.

In the third place, I shall consider whether the power of taxation to be given the general government be safe; and first, whether it be safe as to the public liberty in general. It would be sufficient to remark that it is, because I conceive the point has been clearly established by more than one gentleman who has spoken on the same side of the question. In the decision of this question, it is of importance to examine whether elections of representatives by great districts of freeholders be favorable to fidelity in representatives. The greatest degree of treachery in representatives is to be apprehended where they are chosen by the least number of electors; because there is a greater facility of using undue influence, and because the electors must be less independent. This position is verified, in the most unanswerable manner, in that country to which appeals are so often made, and sometimes instructively.

Who are the most corrupt members in Parliament? Are they not the inhabitants of small towns and districts? The supporters of liberty are from the great counties. Have we not seen that the representatives of the city of London, who are chosen by such thousands of voters, have continually studied and supported the liberties of the people, and opposed the corruption of the crown? We have seen continually that most of the members in the ministerial majority are drawn from small, circumscribed districts. We may there-

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fore conclude, that our representatives, being chosen by such extensive districts, will be upright and independent. In proportion as we have security against corruption in representatives, we have security against corruption from every other quarter whatsoever.

I shall take a view of certain subjects, which will lead to some reflections to quiet the minds of those gentlemen who think that the individual governments will be swallowed up by the general government. In order to effect this, it is proper to compare the state governments with the general government, with respect to reciprocal dependence, and with respect to the means they have of supporting themselves, or of encroaching on one another. At the first comparison, we must be struck with these remarkable facts. The general government has not the appointment of a single branch of the individual governments, or of any officers within the states, to execute their laws. Are not the states integral parts of the general government? Is not the President chosen under the influence of the state legislatures? May we not suppose that he will be complaisant to those from whom he has his appointment, and from whom he must have his reappointment? The senators are appointed altogether by the legislatures.

My honorable friend apprehended a coalition between the President, Senate, and House of Representatives, against the states. This could be supposed only from a similarity of the component parts.

A coalition is not likely to take place, because its component parts are heterogeneous in their nature. The House of Representatives is not chosen by the state governments, but under the influence of those who compose the state legislatures. Let us suppose ten men appointed to carry the government into effect; there is every degree of certainty that they would be indebted for their reëlection to the members of the legislatures. If they derive their appointment from them, will they not execute their duty to them? Besides this, will not the people (whose predominant interest will ultimately prevail) feel great attachment to the state legislatures? They have the care of all local interests — those familiar domestic objects, for which men have the strongest predilection. The general government, on the contrary, has the preservation of the aggregate interest of

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the Union — objects which, being less familiar, and more remote from men's notice, have a less powerful influence on their minds. Do we not see great and natural attachments arising from local considerations? This will be the case in a much stronger degree in the state governments than in the general government. The people will be attached to their state legislatures from a thousand causes; and into whatever scale the people at large will throw themselves, that scale will preponderate.

Did we not perceive, in the early stages of the war, when Congress was the idol of America, and when in pursuit of the object most dear to America, that they were attached to their states? Afterwards, the whole current of their affection was to the states; and such would be still the case, were it not for the alarming situation of America.

At one period of the congressional history, they had the power to trample on the states. When they had that fund of paper money in their hands, and could carry on all their measures without any dependence on the states, was there any disposition to debase the state governments? All that municipal authority which was necessary to carry on the administration of the government, they still retained unimpaired. There was no attempt to diminish it.

I am led, by what fell from my honorable friend yesterday, to take this supposed combination in another view. Is it supposed that the influence of the general government will facilitate a combination between the members? Is it supposed that it will preponderate against that of the state governments? The means of influence consist in having the disposal of gifts and emoluments, and in the number of persons employed by and dependent upon a government. Will any gentleman compare the number of persons which will be employed in the general government with the number of those which will be in the state governments? The number of dependants upon the state governments will be infinitely greater than those on the general government. I may say, with truth, that there never was a more economical government in any age or country, nor which will require fewer hands, or give less influence.

Let us compare the members composing the legislative, executive, and judicial powers, in the general government, with these in the states, and let us take into view the vast

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number of persons employed in the states: from the chief officers to the lowest, we shall find the scale preponderating so much in favor of the states, that, while so many persons are attached to them, it will be impossible to turn the balance against them. There will be an irresistible bias towards the state governments.

Consider the number of militia officers, the number of justices of the peace, the number of the members of the legislatures, and all the various officers for districts, towns, and corporations — all intermixing with, and residing among, the people at large. While this part of the community retain their affection to the state governments, I conceive that the fact will be, that the state governments, and not the general government, will preponderate. It cannot be contradicted that they have more extensive means of influence. I have my fears as well as the honorable gentleman; but my fears are on the other side. Experience, I think, will prove (though there be no infallible proof of it here) that the powerful and prevailing influence of the states will produce such attention to local considerations as will be inconsistent with the advancement of the interest of the Union. But I choose rather to indulge my hopes than fears, because I flatter myself, if inconveniences should result from it, that the clause which provides amendments will remedy them. The combination of powers vested in those persons would seem conclusive in favor of the states.

The powers of the general government relate to external objects, and are but few. But the powers in the states relate to those great objects which immediately concern the prosperity of the people. Let us observe, also, that the powers in the general government are those which will be exercised mostly in time of war, while those of the state governments will be exercised in time of peace. But I hope the time of war will be little, compared to that of peace. I should not complete the view which ought to be taken of this subject, without making this additional remark, — that the powers vested in the proposed government are not so much an augmentation of powers in the general government, as a change rendered necessary for the purpose of giving efficacy to those which were vested in it before. It cannot escape any gentleman that this power, in theory, exists in the Confederation as fully as in this Constitution.

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The only difference is this — that now they tax states, and by this plan they will tax individuals. There is no theoretic difference between the two. But in practice there will be an infinite difference between them. The one is an ineffectual power; the other is adequate to the purpose for which it is given. This change was necessary for the public safety.

Let us suppose, for a moment, that the acts of Congress requiring money from the states had been as effectual as the paper on the table; suppose all the laws of Congress had complete compliance; will any gentleman say that, as far as we can judge from past experience, the state governments would have been debased, and all consolidated and incorporated in one system? My imagination cannot reach it. I conceive that, had those acts that effect which all laws ought to have, the states would have retained their sovereignty.

It seems to be supposed that it will introduce new expenses and burdens on the people. I believe it is not necessary here to make a comparison between the expenses of the present and of the proposed government. All agree that the general government ought to have power for the regulation of commerce. I will venture to say that very great improvements, and very economical regulations, will be made. It will be a principal object to guard against smuggling, and such other attacks on the revenue as other nations are subject to. We are now obliged to defend against those lawless attempts; but, from the interfering regulations of different states, with little success. There are regulations in different states which are unfavorable to the inhabitants of other states, and which militate against the revenue. New York levies money from New Jersey by her imposts. In New Jersey, instead of coöperating with New York, the legislature favors violations on her regulations. This will not be the case when uniform regulations will be made.

Requisitions, though ineffectual, are unfriendly to economy. When requisitions are submitted to the states, there are near two thousand five hundred or three thousand persons deliberating on the mode of payment. All these, during their deliberation, receive public pay. A great proportion of every session, in every state, is employed to

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consider whether they will pay at all, and in what mode. Let us suppose fifteen hundred persons are deliberating on this subject. Let any one make a calculation: it will be found that a very few days of their deliberation will consume more of the public money than one year of that general legislature. This is not all, Mr. Chairman. When general powers will be vested in the general government, there will be less of that mutability which is seen in the legislation of the states. The consequence will be a great saving of expense and time. There is another great advantage, which I will but barely mention. The greatest calamity to which the United States can be subject is a vicissitude of laws, and continual shifting and changing from one object to another—which must expose the people to various inconveniences. This has a certain effect, of which sagacious men always have made, and always will make, an advantage. From whom is advantage made? From the industrious farmers and tradesmen who are ignorant of the means of making such advantages. The people will not be exposed to these inconveniences under a uniform and steady course of legislation. But they have been so heretofore. The history of taxation in this country is so fully and well known to every member of this committee, that I shall say no more of it.

We have hitherto discussed the subject very irregularly. I dare not dictate to any gentleman, but I hope we shall pursue that mode of going through the business which the house resolved. With respect to a great variety of arguments made use of, I mean to take notice of them when we come to those parts of the Constitution to which they apply. If we exchange this mode for the regular way of proceeding, we can finish it better in one week than one month.

[A desultory conversation arose concerning the mode of discussion.]

Mr. HENRY declared it as his opinion, that the best mode was to discuss it at large; that the gentlemen on the other side had done so, as well as those of his side; and he hoped that every gentleman would consider himself at liberty to go into the subject fully, because he thought it is the best way to elucidate it.

Mr. MADISON wished not to exclude any light that could be cast on the subject. He declared that he would be the last man that would object to the fullest investigation;

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but, at the same time, he thought it would be more elucidated by a regular progressive discussion, than by that unconnected, irregular method which they had hitherto pursued.

Mr. GEORGE MASON. Mr. Chairman, gentlemen will be pleased to consider that, on so important a subject as this, it is impossible, in the nature of things, to avoid arguing more at large than is usual. You will allow that I have not taken up a great part of your time. But as gentlemen have indulged themselves in entering at large into the subject, I hope to be permitted to follow them, and answer their observations.

The worthy member, (Mr. Nicholas,) at a very early day, gave us an accurate detail of the representation of the people in Britain, and of the rights of the king of Britain; and illustrated his observations by a quotation from Dr. Price. Gentlemen will please to take notice that those arguments relate to a single government, and that they are not applicable to this case. However applicable they may be to such a government as that of Great Britain, it will be entirely inapplicable to such a government as ours. The gentleman, in drawing a comparison between the representation of the people in the House of Commons, in England, and the representation in the government now proposed to us, has been pleased to express his approbation in favor of the American government. Let us examine. I think that there are about 550 members in the English House of Commons. The people of Britain have a representation in Parliament of 550 members, who intimately mingle with all classes of the people, feeling and knowing their circumstances. In the proposed American government — in a country perhaps ten times more extensive — we are to have a representation of sixty-five, who, from the nature of the government, cannot possibly be mingled with the different classes of the people, nor have a fellow-feeling for them.

They must form an aristocracy, and will not regard the interest of the people. Experience tells us that men pay most regard to those whose rank and situation are similar to their own. In the course of the investigation, the gentleman mentioned the bribery and corruption of Parliament, and drew a conclusion the very reverse of what I should have formed on the subject. He said, if I recollect rightly, that the American representation is more secured against

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bribery and corruption, than the English Parliament. Are sixty-five better than five hundred and fifty? Bribery and corruption, in my opinion, will be practised in America more than in England, in proportion as five hundred and fifty exceed sixty-five; and there will be less integrity and probity in proportion as sixty-five is less than five hundred and fifty From what source is the bribery practised in the British Parliament derived? I think the principal source is the distribution of places, offices, and posts. Will any gentleman deny this? Give me leave, on this occasion, to recur to that clause of the Constitution which speaks of restraint, and has the appearance of restraining from corruption, &c., but which, when examined, will be found to be no restraint at all. The clause runs thus: "No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office." This appears to me to be no restraint at all. It is to be observed that this restraint only extends to civil offices.

But I will not examine whether it be a proper distinction or not. What is the restraint as to civil offices? Only that they shall not be appointed to offices which shall have been created, or the emoluments whereof shall have been increased, during the time for which they shall have been elected. They may be appointed to existing offices, if the emoluments be not increased during the time for which they were elected.

[Here Mr. Mason spoke too low to be heard.]

Thus, after the government is set in motion, the restraint will be gone. They may appoint what number of officers they please. They may send ambassadors to every part of Europe. Here is, sir, I think, as wide a door for corruption as in any government in Europe. There is the same inducement for corruption, there is the same room for it, in this government, which they have in the British government; and in proportion as the number is smaller, corruption will be greater.

That unconditional power of taxation which is given to that government cannot but oppress the people. If, instead of this, a conditional power of taxation be given, in case of

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refusal to comply with requisitions, the same end will be answered with convenience to the people. This will not lessen the power of Congress; we do not want to lessen the power of Congress unnecessarily. This will produce moderation in the demand, and will prevent the ruinous exercise of that power by those who know not our situation. We shall then have that mode of taxation which is the most easy, and least oppressive to the people, because it will be exercised by those who are acquainted with their condition and circumstances. This, sir, is the great object we wish to secure — that our people should be taxed by those who have a fellow-feeling for them. I think I can venture to assert that the general government will lay such taxes as are the easiest and the most productive in the collection. This is natural and probable.

For example, they may lay a poll tax. This is simply and easily collected, but is of all taxes the most grievous. Why the most grievous? Because it falls light on the rich, and heavy on the poor. It is most oppressive: for if the rich man is taxed, he can only retrench his superfluities; but the consequence to the poor man is, that it increases his miseries. That they will lay the most simple taxes, and such as are easiest to collect, is highly probable, nay, almost absolutely certain. I shall take the liberty, on this occasion, to read you a letter, which will show, at least as far as opinion goes, what sort of taxes will be most probably laid on us, if we adopt this Constitution. It was the opinion of a gentleman of information. It will in some degree establish the fallacy of those reports which have been circulated through the country, and which induced a great many poor, ignorant people to believe that the taxes were to be lessened by the adoption of the proposed government.

[Here Mr. Mason read a letter from Mr. Robert Morris, financier of the United States, to Congress, wherein he spoke of the propriety of laying the following taxes for the use of the United States; viz., six shillings on every hundred acres of land, six shillings per poll, and ninepence per gallon on all spirituous liquors distilled in the country. Mr. Mason declared that he did not mean to make the smallest reflection on Mr. Morris, but introduced his letter to show what taxes would probably be laid.]

He then continued: This will at least show that such taxes were in agitation, and were strongly advocated by a considerable part of Congress. I have read this letter to show that they will lay taxes most easy to be collected,

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without any regard to our convenience; so that, instead of amusing ourselves with a diminution of our taxes, we may rest assured that they will be increased. But my principal reason for introducing it was, to show that taxes would be laid by those who are not acquainted with our situation, and that the agents of the collection may be consulted upon the most productive and simple mode of taxation. The gentleman who wrote this letter had more information on this subject than we have; but this will show gentlemen that we are not to be eased of taxes. Any of those taxes which have been pointed out by this financier as the most eligible, will be ruinous and unequal, and will be particularly oppressive on the poorest part of the people.

As to a poll tax, I have already spoken of its iniquitous operation, and need not say much of it, because it is so generally disliked in this state, that we were obliged to abolish it last year. As to a land tax, it will operate most unequally. The man who has one hundred acres of the richest land will pay as little as a man who has one hundred acres of the poorest land. Near Philadelphia, or Boston, an acre of land is worth one hundred pounds; yet the possessor of it will pay no more than the man with us whose land is hardly worth twenty shillings an acre. Some landholders in this state will have to pay twenty times as much as will be paid for all the land on which Philadelphia stands; and as to excise, this will carry the exciseman to every farmer's house, who distils a little brandy, where he may search and ransack as he pleases. These I mention as specimens of the kind of tax which is to be laid upon us by those who have no information of our situation, and by a government where the wealthy only are represented. It is urged that no new power is given up to the general government, and that the Confederation had those powers before. That system derived its power from the state governments. When the people of Virginia formed their government, they reserved certain great powers in the bill of rights. They would not trust their own citizens, who had a similarity of interest with themselves, and who had frequent and intimate communication with them. They would not trust their own fellow-citizens, I say, with the exercise of those great powers reserved in the bill of rights. Do we not, by this system, give up a great part of the rights, reserved by the bill of

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rights, to those who have no fellow-feeling for the people — to a government where the representatives will have no communication with the people? I say, then, there are great and important powers, which were not transferred to the state government, given up to the general government by this Constitution.

Let us advert to the 6th article. It expressly declares, that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby; any thing in the Constitution or laws of any state to the contrary notwithstanding." Now, sir, if the laws and Constitution of the general government, as expressly said, be paramount to those of any state, are not those rights with which we were afraid to trust our own citizens annulled and given up to the general government? The bill of rights is a part of our own Constitution. The judges are obliged to take notice of the laws of the general government; consequently, the rights secured by our bill of rights are given up. If they are not given up, where are they secured? By implication! Let gentlemen show that they are secured in a plain, direct, unequivocal manner. It is not in their power. Then where is the security? Where is the barrier drawn between the government and the rights of the citizens, as secured in our own state government? These rights are given up in that paper; but I trust that this Convention will never give them up, but will take pains to secure them to the latest posterity. If a check be necessary in our own state government, it is much more so in a government where our representatives are to be at the distance of a thousand miles from us, without any responsibility.

I said, the other day, that they could not have sufficient information. I was asked how the legislature of Virginia got their information. The answer is easy and obvious. They get it from one hundred and sixty representatives, dispersed through all parts of the country. In this government how do they get it? Instead of one hundred and sixty, there are but ten — chosen, if not wholly, yet mostly, from the higher order of the people — from the great, the wealthy — the *well-born* — the *well-born*, Mr. Chairman, that aristo-

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cratic idol — that flattering idea — that *exotic* plant which has been lately imported from the ports of Great Britain, and planted in the luxurious soil of this country.

In the course of the investigation, much praise has been lavished upon the article which fixes the number of representatives. It only says that the proportion *shall not exceed* one for every thirty thousand.

The worthy gentleman says that the number must be increased, because representation and taxation are in proportion, and that one cannot be increased without increasing the other, nor decreased without decreasing the other. Let us examine the weight of this argument. If the proportion of each state equally and ratably diminishes, the words of the Constitution will be as much satisfied as if it had been increased in the same manner, without any reduction of the taxes. Let us illustrate it familiarly. Virginia has ten representatives; Maryland has six. Virginia will have to pay a sum in proportion, greater than Maryland, as ten to six. Suppose Virginia reduced to five, and Maryland to three. The relative proportion of money, paid by each, will be the same as before; and yet the honorable gentleman said, that, if this did not convince us, he would give up. I am one of those unhappy men who cannot be amused with assertions. A man from the dead might frighten me; but I am sure that he could not convince me without using better arguments than I have yet heard.

The same gentleman showed us that, though the Northern States had a most decided majority against us, yet the increase of population among us would, in the course of years, change it in our favor. A very sound argument indeed, that we should cheerfully burn ourselves to death in hopes of a joyful and happy resurrection!

The very worthy gentleman who presides was pleased to tell us that there was no interference between the legislation of the general government and that of the state legislatures. Pardon me if I show the contrary. In the important instance of taxation there is a palpable interference. Suppose a poll tax: the general government can lay a poll tax; the state legislatures can do the same — can lay it on the same man, and at the same time; and yet it is said there can be no interference.

My honorable colleague in the late federal Convention, in

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answer to another gentleman, who had said that the annals of mankind could afford no instance of rulers giving up power, has told us that eight states had adopted the Constitution, and that this was a relinquishment of power. Ought this example to have any weight with us? If that relinquishment was imprudent, shall we imitate it? I will venture to assert that, out of a thousand instances where the people precipitately and unguardedly relinquished their power, there has not been one instance of a voluntary surrender of it back by rulers. He afterwards said, that freedom at home and respectability abroad would be the consequence of the adoption of this government, and that we cannot exist without its adoption. Highly as I esteem that gentleman, highly as I esteem his historical knowledge, I am obliged to deny his assertions.

If this government will endanger our liberties in its present state, its adoption will not promote our happiness at home. The people of this country are as independent, happy, and respectable, as those of any country. France is the most powerful and respectable nation on earth. Would the planters of this country change their shoes for the wooden shoes of the peasants of France? Perhaps Russia is the next greatest power in Europe. Would we change situation with the people of Russia? We have heard a great deal of Holland. Some have called its government a democracy; others have called it an aristocracy. It is well known to be a republic. It has arisen to uncommon power and wealth. Compared to its neighboring countries, its fortune has been surprising.

[Here Mr. Mason made a quotation, showing the comparative flourishing condition of the inhabitants of Holland, even a few years after they had shaken off the Spanish yoke; that plenty and contentment were to be every where seen, the peasants well clothed, provisions plenty, their furniture and domestic utensils in abundance, and their lands well stocked; — that, on the contrary, the people of Spain were in a poor and miserable condition, in want of every thing of which the people of Holland enjoyed the greatest abundance.]

Mr. Mason then continued: As this was within a few years after the Spanish revolution, this striking contrast could be owing to no other cause than the liberty which they enjoyed under their government. Here behold the difference between a powerful, great consolidation, and a confederacy. They tell us that, if we be powerful and respecta-

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ble abroad, we shall have liberty and happiness at home. Let us secure that liberty, that happiness, first, and we shall then be respectable.

I have some acquaintance with a great many characters who favor this government, their connections, their conduct, their political principles, and a number of other circumstances. There are a great many wise and good men among them. But when I look round the number of my acquaintance in Virginia, the country wherein I was born, and have lived so many years, and observe who are the warmest and the most zealous friends to this new government, it makes me think of the story of the cat transformed into a fine lady: forgetting her transformation, and happening to see a rat, she could not restrain herself, but sprang upon it out of the chair.

He (Governor Randolph) dwelt largely on the necessity of the union. A great many others have enlarged on this subject. Foreigners would suppose, from the declamation about union, that there was a great dislike in America to any general American government. I have never, in my whole life, heard one single man deny the necessity and propriety of the union. This necessity is deeply impressed on every American mind. There can be no danger of any object being lost when the mind of every man in the country is strongly attached to it. But I hope that it is not to the name, but to the blessings of union, that we are attached. Those gentlemen who are loudest in their praises of the name, are not more attached to the reality than I am. The security of our liberty and happiness is the object we ought to have in view in wishing to establish the union. If, instead of securing these, we endanger them, the name of union will be but a trivial consolation. If the objections be removed, if those parts which are clearly subversive of our rights be altered, no man will go farther than I will to advance the union. We are told, in strong language, of dangers to which we will be exposed unless we adopt this Constitution. Among the rest, domestic safety is said to be in danger. This government does not intend our domestic safety. It authorizes the importation of slaves for twenty-odd years, and thus continues upon us that nefarious trade. Instead of securing and protecting us, the continuation of this detestable trade adds daily to our weakness. Though this evil is

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increasing, there is no clause in the Constitution that will prevent the Northern and Eastern States from meddling with our whole property of that kind. There is a clause to prohibit the importation of slaves after twenty years; but there is no provision made for securing to the Southern States those they now possess. It is far from being a desirable property; but it will involve us in great difficulties and infelicity to be now deprived of them. There ought to be a clause in the Constitution to secure us that property, which we have acquired under our former laws, and the loss of which would bring ruin on a great many people.

Maryland and the Potomac have been mentioned. I have had some little means of being acquainted with that subject, having been one of the commissioners who made the compact with Maryland. There is no cause of fear on that ground. Maryland, says the gentleman, has a right to the navigation of the Potomac. This is a right which she never exercised. Maryland was pleased with what she had in return for a right which she never exercised. Every ship which comes within the state of Maryland, except some small boats, must come within our country. Maryland was very glad to get what she got by this compact, for she considered it as next to getting it without any compensation on her part. She considered it, at least, as next to a *quid pro quo*.

The back land, he says, is another source of danger. Another day will show that, if that Constitution is adopted without amendments, there are twenty thousand families of good citizens in the north-west district, between the Alleghany Mountains and the Blue Ridge, who will run the risk of being driven from their lands. They will be ousted from them by the Indiana Company—by the survivors—although their right and titles have been confirmed by the Assembly of our own state. I will pursue it no farther now, but take an opportunity to consider it another time.

The alarming magnitude of our debts is urged as a reason for our adoption. And shall we, because involved in debts, take less care of our rights and liberties? Shall we abandon them because we owe money which we cannot immediately pay? Will this system enable us to pay our debts and lessen our difficulties? Perhaps the new government possesses some secret, some powerful means of turning every

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thing to gold. It has been called by one gentleman the philosopher's stone. The comparison was a pointed one, at least in this, that, on the subject of producing gold, they will be both equally delusive and fallacious. The one will be as inapplicable as the other. The dissolution of the Union, the dangers of separate confederacies, and the quarrels of borderers, have been enlarged upon to persuade us to embrace this government.

My honorable colleague in the late Convention seems to raise phantoms, and to show a singular skill in exorcisms, to terrify and compel us to take the new government, with all its sins and dangers. I know that he once saw as great danger in it as I do. What has happened since to alter his opinion? If any thing, I know it not. But the Virginia legislature has occasioned it, by postponing the matter. The Convention had met in June, instead of March or April. The liberty or misery of millions yet unborn are deeply concerned in our decision. When this is the case, I cannot imagine that the short period between the last of September and first of June ought to make any difference. The union between England and Scotland has been strongly instanced by the honorable gentleman to prove the necessity of our acceding to this new government. He must know that the act of union secured the rights of the Scotch nation. The rights and privileges of the people of Scotland are expressly secured. We wish only our rights to be secured. We must have such amendments as will secure the liberties and happiness of the people on a plain, simple construction, not on a doubtful ground. We wish to give the government sufficient energy, on real republican principles; but we wish to withhold such powers as are not absolutely necessary in themselves, but are extremely dangerous. We wish to shut the door against corruption in that place where it is most dangerous — to secure against the corruption of our own representatives. We ask such amendments as will point out what powers are reserved to the state governments, and clearly discriminate between them and those which are given to the general government, so as to prevent future disputes and clashing of interests. Grant us amendments like these, and we will cheerfully, with our hands and hearts, unite with those who advocate it, and we will do every thing we can to support and carry it into execution. But in its pres

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ent form we never can accede to it. Our duty to God and to our posterity forbids it. We acknowledge the defects of the Confederation, and the necessity of a reform. We ardently wish for a union with our sister states, on terms of security. This I am bold to declare is the desire of most of the people. On these terms we will most cheerfully join with the warmest friends of this Constitution. On another occasion I shall point out the great dangers of this Constitution, and the amendments which are necessary. I will likewise endeavor to show that amendments after ratification are delusive and fallacious — perhaps utterly impracticable.

Mr. LEE (of Westmoreland) strongly urged the propriety of adhering to the resolution of the house, of debating the subject regularly; that the irregular and disorderly manner in which gentlemen had hitherto proceeded was unfriendly to a rational and just decision, tended to protract time unnecessarily, and interfered with the private concerns of gentlemen.

He then proceeded: I waited some time in hopes that some gentleman on the same side of the question would rise. I hope that I may take the liberty of making a few remarks on what fell from the honorable gentleman last up. He has endeavored to draw our attention from the merits of the question by jocose observations and satirical allusions. He ought to know that ridicule is not the test of truth. Does he imagine that he who can raise the loudest laugh is the soundest reasoner? Sir, the judgments, and not the risibility, of gentlemen, are to be consulted. Had the gentleman followed that rule which he himself proposed, he would not have shown the letter of a private gentleman, who, in times of difficulty, had offered his opinion respecting the mode in which it would be most expedient to raise the public funds. Does it follow, since a private individual proposed such a scheme of taxation, that the new government will adopt it? But the same principle has also governed the gentleman when he mentions the expressions of another private gentleman — *the well-born;* that our federal representatives are to be chosen from the higher orders of the people — from *the well-born.* Is there a single expression like this in the Constitution? Every man who is entitled to vote for a member of our own state legislature, will have a right to vote for a member in the House of Representa-

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tives in the general government. In both cases the confidence of the people alone can procure an election. This insinuation is totally unwarrantable. Is it proper that the Constitution should be thus attacked with the opinions of every private gentleman? I hope we shall hear no more of such groundless aspersions. Raising a laugh, sir, will not prove the merits, nor expose the defects, of this system.

The honorable gentleman abominates it, because it does not prohibit the importation of slaves, and because it does not secure the continuance of the existing slavery! Is it not obviously inconsistent to criminate it for two contradictory reasons? I submit it to the consideration of the gentlemen, whether, if it be reprehensible in the one case, it can be censurable in the other. Mr. Lee then concluded by earnestly recommending to the committee to proceed regularly.

Mr. GRAYSON. Mr. Chairman, I must make a few observations on this subject; and, if my arguments are desultory, I hope I shall stand justified by the bad example which has been set me, and the necessity I am under of following my opponents through all their various recesses. I do not in the smallest degree blame the conduct of the gentlemen who represented this state in the general Convention. I believe that they endeavored to do all the good to this commonwealth which was in their power, and that all the members who formed that Convention did every thing within the compass of their abilities to procure the best terms for their particular states. That they did not do more for the general good of America, is perhaps a misfortune. They are entitled, however, to our thanks and those of the people. Although I do not approve of the result of their deliberations, I do not criminate or suspect the principles on which they acted. I desire that what I may say may not be improperly applied. I make no allusions to any gentleman whatever.

I do not pretend to say that the present Confederation is not defective. Its defects have been actually experienced. But I am afraid that they cannot be removed. It has defects arising from reasons which are inseparable from the nature of such governments, and which cannot be removed but by death. All such governments, that ever existed, have uniformly produced this consequence — that particular interests have been consulted, and the general good, to which all

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wishes ought to be directed, has been neglected. But the particular disorders of Virginia ought not to be attributed to the Confederation. I was concerned to hear the local affairs of Virginia mentioned. If these make impressions on the minds of the gentlemen, why did not the Convention provide for the removing the evils of the government of Virginia? If I am right, the states, with respect to their internal affairs, are left precisely as before, except in a few instances. Of course, the judiciary, should this government be adopted, would not be improved; the state government would be in this respect nearly the same; and the Assembly may, without judge or jury, hang as many men as they may think proper to sacrifice to the good of the public. Our judiciary has been certainly improved in some respects since the revolution. The proceedings of our courts are not, at least, as rapid as they were under the royal government.

[Here Mr. Grayson mentioned a particular cause which had been thirty-one years on the docket.]

The adoption of this government will not meliorate our own particular system. I beg leave to consider the circumstances of the Union antecedent to the meeting of the Convention at Philadelphia. We have been told of phantoms and ideal dangers to lead us into measures which will, in my opinion, be the ruin of our country. If the existence of those dangers cannot be proved, if there be no apprehension of wars, if there be no rumors of wars, it will place the subject in a different light, and plainly evince to the world that there cannot be any reason for adopting measures which we apprehend to be ruinous and destructive. When this state proposed that the general government should be improved, Massachusetts was just recovered from a rebellion which had brought the republic to the brink of destruction — from a rebellion which was crushed by that federal government which is now so much contemned and abhorred: a vote of that august body for fifteen hundred men, aided by the exertions of the state, silenced all opposition, and shortly restored the public tranquillity. Massachusetts was satisfied that these internal commotions were so happily settled, and was unwilling to risk any similar distresses by theoretic experiments. Were the Eastern States willing to enter into this measure? Were they willing to accede to the pro-

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posal of Virginia? In what manner was it received? Connecticut revolted at the idea. The Eastern States, sir, were unwilling to recommend a meeting of a convention. They were well aware of the dangers of revolutions and changes. Why was every effort used, and such uncommon pains taken, to bring it about? This would have been unnecessary, had it been approved of by the people. Was Pennsylvania disposed for the reception of this project of reformation? No, sir. She was even unwilling to amend her revenue laws, so as to make the five per centum operative. She was satisfied with things as they were. There was no complaint, that ever I heard of, from any other part of the Union, except Virginia. This being the case among ourselves, what dangers were there to be apprehended from foreign nations? It will be easily shown that dangers from that quarter were absolutely imaginary. Was not France friendly? Unequivocally so. She was devising new regulations of commerce for our advantage. Did she harass us with applications for her money? Is it likely that France will quarrel with us? Is it not reasonable to suppose that she will be more desirous than ever to cling, after losing the Dutch republic, to her best ally? How are the Dutch? We owe them money, it is true; and are they not willing that we should owe them more? Mr. Adams applied to them for a new loan to the poor, despised Confederation. They readily granted it. The Dutch have a fellow-feeling for us. They were in the same situation with ourselves.

I believe that the money which the Dutch borrowed of Henry IV. is not yet paid. How did they pass Queen Elizabeth's loan? At a very considerable discount. They took advantage of the weakness and necessities of James I., and made their own terms with that contemptible monarch. Loans from nations are not like loans from private men. Nations lend money, and grant assistance, to one another, from views of national interest. France was willing to pluck the fairest feather out of the British crown. This was her object in aiding us. She will not quarrel with us on pecuniary considerations. Congress considered it in this point of view; for when a proposition was made to make it a debt of private persons, it was rejected without hesitation. That respectable body wisely considered, that, while we remained

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their debtors in so considerable a degree, they would not be inattentive to our interest.

With respect to Spain, she is friendly in a high degree. I wish to know by whose interposition was the treaty with Morocco made. Was it not by that of the king of Spain? Several predatory nations disturbed us, on going into the Mediterranean: the influence of Charles III. at the Barbary court, and four thousand pounds, procured as good a treaty with Morocco as could be expected. But I acknowledge it is not of any consequence, since the Algerines and people of Tunis have not entered into similar measures. We have nothing to fear from Spain; and, were she hostile, she could never be formidable to this country. Her strength is so scattered, that she never can be dangerous to us either in peace or war.

As to Portugal, we have a treaty with her, which may be very advantageous, though it be not yet ratified.

The domestic debt is diminished by considerable sales of western lands to Cutler, Sergeant, and Company; to Simms; and to Royal, Flint, and Company. The board of treasury is authorized to sell in Europe, or any where else, the residue of those lands.

An act of Congress has passed, to adjust the public debts between the individual states and the United States.

Was our trade in a despicable situation? I shall say nothing of what did not come under my own observation. When I was in Congress, sixteen vessels had had sea letters in the East India trade, and two hundred vessels entered and cleared out, in the French West India Islands, in one year.

I must confess that public credit has suffered, and that our public creditors have been ill used. This was owing to a fault at the head-quarters,— to Congress themselves,— in not apportioning the debts on the different states, and in not selling the western lands at an earlier period. If requisitions have not been complied with, it must be owing to Congress, who might have put the unpopular debts on the back lands. Commutation is abhorrent to New England ideas. Speculation is abhorrent to the Eastern States. Those inconveniences have resulted from the bad policy of Congress.

There are certain modes of governing the people which

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will succeed. There are others which will not. The idea of consolidation is abhorrent to the people of this country How were the sentiments of the people before the meeting of the Convention at Philadelphia? They had only one object in view. Their ideas reached no farther than to give the general government the five per centum impost, and the regulation of trade. When it was agitated in Congress, in a committee of the whole, this was all that was asked, or was deemed necessary. Since that period, their views have extended much farther. Horrors have been greatly magnified since the rising of the Convention.

We are now told by the honorable gentleman (Governor Randolph) that we shall have wars and rumors of wars, that every calamity is to attend us, and that we shall be ruined and disunited forever, unless we adopt this Constitution. Pennsylvania and Maryland are to fall upon us from the north, like the Goths and Vandals of old; the Algerines, whose flat-sided vessels never came farther than Madeira, are to fill the Chesapeake with mighty fleets, and to attack us on our front; the Indians are to invade us with numerous armies on our rear, in order to convert our cleared lands into hunting-grounds; and the Carolinians, from the south, (mounted on alligators, I presume,) are to come and destroy our cornfields, and eat up our little children! These, sir, are the mighty dangers which await us if we reject — dangers which are merely imaginary, and ludicrous in the extreme! Are we to be destroyed by Maryland and Pennsylvania? What will democratic states make war for, and how long since have they imbibed a hostile spirit?

But the generality are to attack us. Will they attack us after violating their faith in the first Union? Will they not violate their faith if they do not take us into their confederacy? Have they not agreed, by the old Confederation, that the Union shall be perpetual, and that no alteration should take place without the consent of Congress, and the confirmation of the legislatures of every state? I cannot think that there is such depravity in mankind as that, after violating public faith so flagrantly, they should make war upon us, also, for not following their example.

The large states have divided the back lands among themselves, and have given as much as they thought proper to the generality. For the fear of disunion, we are told that

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we ought to take measures which we otherwise should not. Disunion is impossible. The Eastern States hold the fisheries, which are their cornfields, by a hair. They have a dispute with the British government about their limits at this moment. Is not a general and strong government necessary for their interest? If ever nations had inducements to peace, the Eastern States now have. New York and Pennsylvania anxiously look forward for the fur trade. How can they obtain it but by union? Can the western posts be got or retained without union? How are the little states inclined? They are not likely to disunite. Their weakness will prevent them from quarrelling. Little men are seldom fond of quarrelling among giants. Is there not a strong inducement to union, while the British are on one side and the Spaniards on the other? Thank Heaven, we have a Carthage of our own!

But we are told that, if we do not embrace the present moment, we are lost forever. Is there no difference between productive states and carrying states? If we hold out, will not the tobacco trade enable us to make terms with the carrying states? Is there nothing in a similarity of laws, religion, language, and manners? Do not these, and the intercourse and intermarriage between the people of the different states, invite them in the strongest manner to union?

But what would I do on the present occasion to remedy the existing defects of the present Confederation? There are two opinions prevailing in the world — the one, that mankind can only be governed by force; the other, that they are capable of freedom and a good government. Under a supposition that mankind can govern themselves, I would recommend that the present Confederation should be amended. Give Congress the regulation of commerce. Infuse new strength and spirit into the state governments; for, when the component parts are strong, it will give energy to the government, although it be otherwise weak. This may be proved by the union of Utrecht.

Apportion the public debts in such a manner as to throw the unpopular ones on the back lands. Call only for requisitions for the foreign interest, and aid them by loans. Keep on so till the American character be marked with some certain features. We are yet too young to know what we are fit for. The continual migration of people from Europe,

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and the settlement of new countries on our western frontiers, are strong arguments against making new experiments now in government. When these things are removed, we can with greater prospect of success, devise changes. We ought to consider, as Montesquieu says, whether the construction of the government be suitable to the genius and disposition of the people, as well as a variety of other circumstances.

But if this position be not true, and men can only be governed by force, then be as gentle as possible. What, then, would I do? I would not take the British monarchy for my model. We have not materials for such a government in this country, although I will be bold to say, that it is one of the governments in the world by which liberty and property are best secured. But I would adopt the following government. I would have a President for life, choosing his successor at the same time; a Senate for life, with the powers of the House of Lords; and a triennial House of Representatives, with the powers of the House of Commons in England.

By having such a President, we should have more independence and energy in the executive, and not be encumbered with the expense, &c., of a court and an hereditary prince and family. By such a Senate, we should have more stability in the laws, without having an odious hereditary aristocracy. By the other branch, we should be fully and fairly represented. If, sir, we are to be consolidated at all, we ought to be fully represented, and governed with sufficient energy, according to numbers, in both houses.

I admit that coercion is necessary in every government in some degree; that it is manifestly wanting in our present government, and that the want of it has ruined many nations. But I should be glad to know what great degree of coercion is in this Constitution, more than in the old government, if the states will refuse to comply with requisitions, and they can only be compelled by means of an army. Suppose the people will not pay the taxes; is not the sword to be then employed? The difference is this — that, by this Constitution, the sword is employed against individuals: by the other, it is employed against the states, which is more honorable. Suppose a general resistance to pay taxes in such a state as Massachusetts; will it not be precisely the same thing as a non-compliance with requisitions?

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Will this Constitution remedy the fatal inconveniences of the clashing state interests? Will not every member that goes from Virginia be actuated by state influence? So they will also from every other state. Will the liberty and property of this country be secure under such a government? What, sir, is the present Constitution? A republican government founded on the principles of monarchy, with the three estates. Is it like the model of Tacitus or Montesquieu? Are there checks in it, as in the British monarchy? There is an executive fetter in some parts, and as unlimited in others as a Roman dictator. A democratic branch marked with the strong features of aristocracy, and an aristocratic branch with all the impurities and imperfections of the British House of Commons, arising from the inequality of representation and want of responsibility. There will be plenty of Old Sarums, if the new Constitution should be adopted. Do we love the British so well as to imitate their imperfections? We could not effect it more than in that particular instance. Are not all defects and corruption founded on an inequality of representation and want of responsibility? How is the executive? Contrary to the opinion of all the best writers, blended with the legislative. We have asked for bread, and they have given us a stone. I am willing to give the government the regulation of trade. It will be serviceable in regulating the trade among the states. But I believe that it will not be attended with the advantages generally expected.

As to direct taxation — give up this, and you give up every thing, as it is the highest act of sovereignty: surrender up this inestimable jewel, and you throw away a pearl richer than all your tribe. But it has been said by an honorable gentleman, (Mr. Pendleton,) as well as I recollect, that there could be no such thing as an interference between the two legislatures, either in point of direct taxation, or in any other case whatsoever. An honorable gentleman (Mr. Mason) has replied that they might interfere in the case of a poll tax. I will go farther, and say, that the case may happen in the judiciary. Suppose a state execution and a federal execution issued against the same man, and the state officer and federal officer seize him at the same moment; would they divide the man in two, as Solomon directed the child to be divided who was claimed by two

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women? I suppose the general government, as being paramount, would prevail. How are two legislatures to coincide, with powers transcendent, supreme, and omnipotent? for such is the definition of a legislature. There must be an external interference, not only in the collection of taxes, but in the judiciary. Was there ever such a thing in any country before? Great Britain never went so far in the stamp act. Poyning's law — the abhorrence of the Irish — never went so far. I never heard of two supreme coördinate powers in one and the same country before. I cannot conceive how it can happen. It surpasses every thing that I have read of concerning other governments, or that I can conceive by the utmost exertion of my faculties.

But, sir, as a cure for every thing, the democratic branch is elected by the people. What security is there in that? as has already been demanded. Their number is too small. Is not a small number more easy to be corrupted than a large one? Were not the tribunes at Rome the choice of the people? Were not the *decemviri* chosen by them? Was not Cæsar himself the choice of the people? Did this secure them from oppression and slavery? Did this render these agents so chosen by the people upright? If five hundred and sixty members are corrupted in the British House of Commons, will it not be easier to corrupt ninety-one members of the new Constitution? But the British House of Commons are corrupted from the same cause that our representatives will be: I mean, *from the Old Sarums* among them — from the inequality of the representation. How many are legislating in this country yearly? It is thought necessary to have fifteen hundred representatives, for the great purposes of legislation, throughout the Union, exclusive of one hundred and sixty senators, which form a proportion of about one for every fifteen hundred persons. By the present Constitution, these extensive powers are to be exercised by the small number of ninety-one persons — a proportion almost twenty times less than the other. It must be degrading indeed to think that so small a number should be equal to so many! Such a preferential distinction must presuppose the happiest selection. They must have something divine in their composition, to merit such a preëminence. But my greatest objection is, that it will, in its operation, be found unequal, grievous, and oppressive. If it have any

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efficacy at all, it must be by a faction — a faction of one part of the Union against the other. I think that it has a great natural imbecility within itself, too weak for a consolidated and too strong for a confederate government. But if it be called into action by a combination of seven states, it will be terrible indeed. We need be at no loss to determine how this combination will be formed. There is a great difference of circumstances between the states. The interest of the carrying states is strikingly different from that of the productive states. I mean not to give offence to any part of America, but mankind are governed by interest. The carrying states will assuredly unite, and our situation will be then wretched indeed. Our commodities will be transported on their own terms, and every measure will have for its object their particular interest. Let ill-fated Ireland be ever present to our view. We ought to be wise enough to guard against the abuse of such a government. Republics, in fact, oppress more than monarchies. If we advert to the page of history, we shall find this disposition too often manifested in republican governments. The Romans, in ancient, and the Dutch, in modern times, oppressed their provinces in a remarkable degree.

I hope that my fears are groundless; but I believe it as I do my creed, that this government will operate as a faction of seven states to oppress the rest of the union. But it may be said that we are represented, and cannot therefore be injured. A poor representation it will be! The British would have been glad to take America into the union, like the Scotch, by giving us a small representation. The Irish might be indulged with the same favor by asking for it. Will that lessen our misfortunes? A small representation gives a pretence to injure and destroy. But, sir, the Scotch union is introduced by an honorable gentleman as an argument in favor of adoption. Would he wish his country to be on the same foundation as Scotland? They have but forty-five members in the House of Commons, and sixteen in the House of Lords.

These go up regularly in order to be bribed. The smallness of their number puts it out of their power to carry any measure. And this unhappy nation exhibits the only instance, perhaps, in the world, where corruption becomes a virtue. I devoutly pray that this description of Scotland

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may not be picturesque of the Southern States, in three years from this time! The committee being tired, as well as myself, I will take another time to give my opinion more fully on this great and important subject.

Mr. Monroe, seconded by Mr. Henry, moved that the committee should rise, that Mr. Grayson might have an opportunity of continuing his argument next day. Mr. Madison insisted on going through the business regularly, according to the resolution of the house.

THURSDAY, *June* 12, 1788.

[The 1st and 2d sections still under consideration.]

Mr. GRAYSON. Mr. Chairman, I asserted yesterday that there were two opinions in the world — the one that mankind were capable of governing themselves, the other that it required actual force to govern them. On the principle that the first position was true, and which is consonant to the rights of humanity, the house will recollect that it was my opinion to amend the present Confederation, and infuse a new portion of health and strength into the state governments; to apportion the public debts in such a manner as to throw the unpopular ones on the back lands; to divide the rest of the domestic debt among the different states; and to call for requisitions only for the interest of the foreign debt. If, contrary to this maxim, force is necessary to govern men, I then did propose, as an alternative, not a monarchy like that of Great Britain, but a milder government, one which, under the idea of a general corruption of manners, and the consequent necessity of force, should be as gentle as possible. I showed, in as strong a manner as I could, some of the principal defects in the Constitution. The greatest defect is the opposition of the component parts to the interests of the whole; for, let gentlemen ascribe its defects to as many causes as their imagination may suggest, this is the principal and radical one. I urged that, to remedy the evils which must result from this government, a more equal representation in the legislature, and proper checks against abuse, were indispensably necessary. I do not pretend to propose for your adoption the plan of government which I mentioned as an alternative to a monarchy, in case mankind were incapable of governing themselves. I only meant, if it were once established that force was necessary to govern men, that such

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a plan would be more eligible for a free people than the introduction of crowned heads and nobles. Having premised this much, to obviate misconstruction, I shall proceed to the clause before us with this observation—that I prefer a complete consolidation to a partial one, but a federal government to either. In my opinion, the states which give up the power of taxation have nothing more to give. The people of that state which suffers any power but her own immediate government to interfere with the sovereign right of taxation are gone forever. Giving the right of taxation is giving a right to increase the miseries of the people. Is it not a political absurdity to suppose that there can be two concurrent legislatures, each possessing the supreme power of direct taxation? If two powers come in contact, must not the one prevail over the other? Must it not strike every man's mind, that two unlimited, coëqual, coördinate authorities, over the same objects, cannot exist together? But we are told that there is one instance of coëxisting powers, in cases of petty corporations, as well here as in other parts of the world. The case of petty corporations does not prove the propriety or possibility of two coëqual, transcendent powers over the same object. Although these have the power of taxation, it only extends to certain degrees and for certain purposes. The powers of corporations are defined, and operate on limited objects. Their power originates by the authority of the legislature, and can be destroyed by the same authority. Persons carrying on the powers of a petty corporation may be punished for interfering with the power of the legislature. Their acts are entirely nugatory, if they contravene those of the legislature.

Scotland is also introduced to show that two different bodies may, with convenience, exercise power of taxation in the same country. How is the land tax there? There is a fixed apportionment. When England pays four shillings in the pound, Scotland only pays forty-five thousand pounds. This proportion cannot be departed from, whatever augmentation may take place. There are stannary courts, and a variety of other inferior private courts, in England. But when they pass the bounds of their jurisdiction, the supreme courts in Westminster Hall may, on appeal, correct the abuse of their power. Is there any connection between the federal courts and state courts? What power is there to keep them

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in order? Where is there any authority to terminate disputes between these two contending powers? An observation came from an honorable gentleman, (Mr. Mason,) when speaking of the propriety of the general government's exercising this power, that, according to the rules and doctrine of representation, the thing was entirely impracticable. I agreed with him in sentiment. I waited to hear the answer from the admirers of the new Constitution. What was the answer? Gentlemen were obliged to give up the point with respect to general, uniform taxes. They have the candor to acknowledge that taxes on slaves would not affect the Eastern States, and that taxes on fish or potash would not affect the Southern States. They are then reduced to this dilemma. In order to support this part of the system, they are obliged to controvert the first maxims of representation. The best writers on this subject lay it down as a fundamental principle, that he who lays a tax should bear his proportion of paying it. A tax that might with propriety be laid, and with ease collected, in Delaware, might be highly improper in Virginia. The taxes cannot be uniform throughout the states without being oppressive to some. If they be not uniform, some of the members will lay taxes, in the payment of which they will bear no proportion. The members of Delaware will assist in laying a tax on our slaves, of which they will pay no part whatever. The members of Delaware do not return to Virginia, to give an account of their conduct. This total want of responsibility and fellow-feeling will destroy the benefits of representation. In order to obviate this objection, the gentleman has said that the same evil exists, in some degree, in the present Confederation:—to which I answer, that the present Confederation has nothing to do but to say how much money is necessary, and to fix the proportion to be paid by each state. They cannot say in what manner the money shall be raised. This is left to the state legislatures.

But, says the honorable gentleman, (Mr. Madison,) if we were in danger, we should be convinced of the necessity of the clause. Are we to be terrified into a belief of its necessity? It is proposed by the opposition to amend it in the following manner — that requisitions shall be first made, and if not paid, that direct taxes shall be laid by way of punishment. If this ultimate right be in Congress, will it

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not be in their power to raise money on any emergency? Will not their credit be competent to procure any sum they may want? Gentlemen agree that it would be proper to imitate the conduct of other countries, and Great Britain particularly, in borrowing money, and establishing funds for the payment of the interest on the loans; that, when the government is properly organized, and its competency to raise money made known, public and private confidence will be the result, and men will readily lend it any sums it may stand in need of. If this should be a fact, and the reasoning well founded, it will clearly follow that it will be practicable to borrow money in cases of great difficulty and danger, on the principles contended for by the opposition; and this observation must supersede the necessity of granting them the powers of direct taxation in the first instance, provided the right is secured in the second.

As to the idea of making extensive loans for extinguishing the present domestic debt, it is what I have not by any means in contemplation. I think it would be unnecessary, unjust, and impolitic. This country is differently situated and circumstanced from all other countries in the world. It is now thinly inhabited, but daily increasing in numbers. It would not be politic to lay grievous taxes and burdens at present. If our numbers double in twenty-five years, as is generally believed, we ought to spare the present race, because there will be double the number of persons to pay in that period of time; so that, were our matters so arranged that the interest could be paid regularly, and that any one might get his money when he thought proper, as is the case now in England, it would be all that public faith would require. Place the subject, however, in every point of view—whether as it relates to raising money for the immediate exigencies of the state, or for the extinction of the foreign or the domestic debt—still it must be obvious, if a proper confidence is placed in the acknowledgment of the right of taxation in the second instance, that every purpose can be answered.

However, sir, if the states are not blameless, why has not the Congress used that coercion which is vested in their government? It is an unquestionable fact that the Belgic republic, on a similar occasion, by an actual exertion of force, brought a delinquent province to a proper sense of justice. The gentleman said that, in case of a partial compliance

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with requisitions, the alternative proposed will operate unequally, by taxing those who may have already paid, as well as those who have not, and involving the innocent in the crimes of the guilty. Suppose the new government fully vested with authority to raise taxes; it will also operate unequally. To make up antecedent deficiencies, they will lay more taxes the next succeeding year. By this means, those persons from whom a full proportion shall have been extracted will be saddled with a share of the deficiencies, as well as those who shall not have discharged their full portion. This mode, then, will have precisely the same unequal and unjust operation as the other.

I said, yesterday, that there were one thousand five hundred representatives, and one hundred and sixty senators, who transacted the affairs of the different states. But we are told that this great number is unnecessary, and that in the multitude of counsellors there is folly instead of wisdom; that they are a dead weight on the public business, which is said in all public assemblies to devolve on a few. This may in some degree be true, but it will not apply in the great latitude as mentioned by the gentleman. If ten men in our Assembly do the public business, may not the same observation extend to Congress? May not five men do the public business of the Union? But there is a great difference between the objects of legislation in Congress and those of the state legislatures. If the former be more complicated, there is a greater necessity of a full and adequate representation. It must be confessed that it is highly improper to trust our liberty and property in the hands of so few persons, if they were any thing less than divine. But it seems that, in this contest of power, the state governments have the advantage. I am of opinion that it will be directly the reverse. What influence can the state governments be supposed to have, after the loss of their most important rights? Will not the diminution of their power and influence be an augmentation of those of the general government? Will not the officers of the general government receive higher compensation for their services than those of the state governments? Will not the most influential men be employed by Congress? I think the state governments will be contemned and despised as soon as they give up the power of direct tax-

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ation; and a state, says Montesquieu, should lose her existence sooner than her importance.

But, sir, we are told that, if we do not give up this power to Congress, the impost will be stretched to the utmost extent. I do suppose this might follow, if the thing did not correct itself. But we know that it is the nature of this kind of taxation, that a small duty will bring more real money than a large one. The experience of the English nation proves the truth of this assertion. There has been much said of the necessity of the five per cent. impost. I have been ever of opinion, that two and a half per cent. would produce more real money into the treasury. But we need not be alarmed on this account, because, when smugglers will be induced, by heavy imposts, to elude the laws, the general government will find it their interest again to reduce them within reasonable and moderate limits. But it is suggested that, if direct taxation be inflicted by way of punishment, it will create great disturbances in the country. This is an assertion without argument. If man is a reasonable being, he will submit to punishment, and acquiesce in the justice of its infliction, when he knows he deserves it. The states will comply with the requisitions of Congress more readily when they know that this power may be ultimately used; and if they do not comply, they will have no reasons to complain of its exercise.

We are then told of the armed neutrality of the empress of Russia, the opposition to it by Great Britain, and the acquiescence of other powers. We are told that, in order to become the carriers of contending nations, it will be necessary to be formidable at sea — that we must have a fleet in case of a war between Great Britain and France. I think that the powers who formed that treaty will be able to support it. But if we were certain that this would not be the case, still I think that the profits that might arise from such a transient commerce could not compensate for the expenses of rendering ourselves formidable at sea, or the dangers that would probably result from the attempt. To have a fleet, in the present limited population of America, is, in my opinion, impracticable and inexpedient. Is America in a situation to have a fleet? I take it to be a rule founded on common sense, that manufacturers, as well as sailors, proceed from a redundancy of inhabitants. Our numbers, compared to our territory, are

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very small indeed. I think, therefore, that all attempts to have a fleet, till our western lands are fully settled, are nugatory and vain. How will you induce your people to go to sea? Is it not more agreeable to follow agriculture than to encounter the dangers and hardships of the ocean? The same reasoning will apply in a greater degree to manufacturers. Both are the result of necessity. It would, besides, be dangerous to have a fleet in our present weak, dispersed, and defenceless situation. The powers of Europe, who have West India possessions, would be alarmed at any extraordinary maritime exertions, and, knowing the danger of our arrival at manhood, would crush us in our infancy. In my opinion, the great objects most necessary to be promoted and attended to, in America, are agriculture and population. First take care that you are sufficiently strong, by land, to guard against European partition; secure your own house before you attack that of other people. I think that the sailors who would be prevailed on to go to sea would be a real loss to the community: neglect of agriculture and loss of labor would be the certain consequence of such an irregular policy.

I hope that, when these objections are thoroughly considered, all ideas of having a fleet, in our infant situation, will be given over. When the American character is better known, and the government established on permanent principles, — when we shall be sufficiently populous, and our situation secure, — then come forward with a fleet; not with a small one, but with one sufficient to meet any of the maritime powers.

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

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conclude that the amount of the imposts will continue to increase, at least for a great number of years.

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

Paper money has been introduced. What did we do a few years ago? Struck off many millions, and by the charms of magic made the value of the emissions diminish by a forty-fold ratio. However unjust or unreasonable this might be, I suppose it was warranted by the inevitable laws of necessity. But, sir, there is no disposition now of having

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paper money; this engine of iniquity is universally reprobated. But conventions give power, and conventions can take it away. This observation does not appear to me well founded. It is not so easy to dissolve a government like this. Its dissolution may be prevented by a trifling minority of the people of America. The consent of so many states is necessary to introduce amendments, that I fear they will with great difficulty be obtained. It is said that a strong government will increase our population by the addition of immigrants. From what quarter is immigration to proceed? From the arbitrary monarchies of Europe? I fear this kind of population would not add much to our happiness or improvement. It is supposed that, from the prevalence of the Orange faction, numbers will come hither from Holland, although it is not imagined the strength of the government will form the inducement. The exclusive power of legislation over the ten miles square is introduced by many gentlemen. I would not deny the utility of vesting the general government with a power of this kind, were it properly guarded. Perhaps I am mistaken, but it occurs to me that Congress may give exclusive privileges to merchants residing within the ten miles square, and that the same exclusive power of legislation will enable them to grant similar privileges to merchants in the strongholds within the states. I wish to know if there be any thing in the Constitution to prevent it. If there be, I have not been able to discover it. I may, perhaps, not thoroughly comprehend this part of the Constitution; but it strikes my mind that there is a possibility that, in process of time, and from the simple operation of effects from causes, the whole commerce of the United States may be exclusively carried on by merchants residing within the seat of government, and those places of arms which may be purchased of the state legislatures. How detrimental and injurious to the community, and how repugnant to the equal rights of mankind, such exclusive emoluments would be, I submit to the consideration of the committee. Things of a similar nature have happened in other countries; or else from whence have issued the Hanse Towns, Cinque Ports, and other places in Europe, which have peculiar privileges in commerce as well as in other matters? I do not offer this sentiment as an opinion, but a conjecture, and, in this doubtful agitation of mind on

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a point of such infinite magnitude, only ask for information from the framers of the Constitution, whose superior opportunities must have furnished them with more ample lights on the subject than I am possessed of. Something is said on the other side with respect to the Mississippi. An honorable gentleman has mentioned, that he was satisfied that no member of Congress had any idea of giving up that river. Sir, I am not at liberty, from my situation, to enter into any investigation on the subject. I am free, however, to acknowledge that I have frequently heard the honorable member declare, that he conceived the object then in contemplation was the only method by which the right of that river could be ultimately secured. I have heard similar declarations from other members.

I must beg leave to observe, at the same time, that I most decidedly differed with them in sentiment. With respect to the citizens of the Eastern and some of the Middle States, perhaps the best and surest means of discovering their general dispositions may be by having recourse to their interests. This seems to be the pole-star to which the policy of nations is directed. If this supposition should be well founded, I think they must have reasons of considerable magnitude for wishing the exclusion of that river. If the Mississippi was yielded to Spain, the migration to the western country would be stopped, and the Northern States would not only retain their inhabitants, but preserve their superiority and influence over those of the South. If matters go on in their present direction, there will be a number of new states to the westward — population may become greater in the Southern States — the ten miles square may approach us! This they must naturally wish to prevent. I think gentlemen may know the disposition of the different states, from the geography of the country, and from the reason and nature of things. Is it not highly imprudent to vest a power in the generality, which will enable those states to relinquish that river? There are but feeble restrictions at present to prevent it. By the old Confederation, nine states are necessary to form any treaty. By this Constitution, the President, with two thirds of the members present in the Senate, can make any treaty. Ten members are two thirds of a quorum. Ten members are the representatives of five states. The Northern States may then easily make a treaty relinquishing

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this river. In my opinion, the power of making treaties, by which the territorial rights of any of the states may be essentially affected, ought to be guarded against every possibility of abuse; and the precarious situation to which those rights will be exposed is one reason, with me, among a number of others, for voting against its adoption.

Mr. PENDLETON. Mr. Chairman, when I spoke formerly, I endeavored to account for the uneasiness of the public mind, that it arose from objections to government drawn from mistaken sources. I stated the general governments of the world to have been either dictated by a conqueror at the point of his sword, or the offspring of confusion — when a great popular leader, seizing the occasion, if he did not produce it, restored order at the expense of liberty, and became the tyrant. In either case, the interest and ambition of the despot, and not the good of society, give the tone to the government, and establish contending interests. A war is commenced, and kept up, where there ought to be union; and the friends of liberty have sounded the alarm to the people, to regain that liberty which circumstances have thus deprived them of. Those alarms, misrepresented and improperly applied to this government, have produced uneasiness in the public mind.

I said, *improperly applied*, because the people, by us, are peaceably assembled, to contemplate, in the calm lights of mild philosophy, what government is best calculated to promote their happiness and secure their liberty. This I am sure we shall effect, if we do not lose sight of them by too much attachment to pictures of beauty, or horror, in our researches into antiquity, our travels for examples into remote regions, or severe criticisms upon our unfriendly applications of expressions which may drop in the effusions of honest zeal. The term *herd* was thus produced — meaning to express a multitude. It was capable of an odious application — that of placing the citizens in a degrading character. I wish it had not been used, and I wish the gentleman on the other side had thought himself at liberty to let it pass, without pointing out its odious meaning. However, I claim no right to prescribe to him. It is done, and it must rest with the candor of the attending citizens, whom it concerns, to give it the innocent meaning which, I am sure, the honorable gentleman intended.

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On the subject of government, the worthy member (Mr. Henry) and I differ at the threshold. I think government necessary to protect liberty. He supposes the American spirit all-sufficient for the purpose. What say the most respectable writers — Montesquieu, Locke, Sidney, Harrington, &c.? They have presented us with no such idea. They properly discard from their system all the severity of cruel punishment, such as tortures, inquisitions, and the like — shocking to human nature, and only calculated to coerce the dominion of tyrants over slaves. But they recommend making the ligaments of government firm, and a rigid execution of the laws, as more necessary, than in a monarchy, to preserve that virtue which they all declare to be the pillar on which the government, and liberty, its object, must stand. They are not so visionary as to suppose there ever did, or ever will, exist a society, however large their aggregate fund of virtue may be, but hath among them persons of a turbulent nature, restless in themselves and disturbing the peace of others — sons of rapine and violence, who, unwilling to labor themselves, are watching every opportunity to snatch from the industrious peasant the fruits of his honest labor. Was I not, then, correct in my inference, that such a government and liberty were friends and allies, and that their common enemies were turbulence, faction, and violence? It is those, therefore, that will be offended by good government; and for those I suppose no gentleman will profess himself an advocate.

The writers just mentioned point out licentiousness as the natural offspring of liberty, and that, therefore, all free governments should endeavor to suppress it, or else it will ultimately overthrow that liberty of which it is the result. Is this speculation only? Alas! reason and experience too fatally prove its truth in all instances. A republican government is the nursery of science. It turns the bent of it to eloquence, as a qualification for the representative character, which is, as it ought to be, the road to our public offices. I have pleasure in beholding these characters already produced in our councils — and a rising fund equal to a constant supply. May Heaven prosper their endeavors, and direct their eloquence to the real good of their country! I am unfortunate enough to differ from the worthy member in another circumstance. He professes himself an advocate for

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the middling and lower classes of men. I profess to be a friend to the equal liberty of all men, from the palace to the cottage, without any other distinction than that between good and bad men. I appeal to my public life and private behavior, to decide whether I have departed from this rule. Since distinctions have been brought forth and communicated to the audience, and will be therefore disseminated, I beg gentlemen to take with them this observation — that distinctions have been produced by the opposition. From the friends of the new government they have heard none. None such are to be found in the organization of the paper before you.

Why bring into the debate the whims of writers — introducing the distinction of *well-born* from others? I consider every man *well-born* who comes into the world with an intelligent mind, and with all his parts perfect. I am an advocate for fixing our government on true republican principles, giving to the poor man free liberty in his person and property.

Whether a man be great or small, he is equally dear to me. I wish, sir, for a regular government, in order to secure and protect those honest citizens who have been distinguished — I mean the industrious farmer and planter. I wish them to be protected in the enjoyment of their honestly and industriously acquired property. I wish commerce to be fully protected and encouraged, that the people may have an opportunity of disposing of their crops at market, and of procuring such supplies as they may be in want of. I presume that there can be no political happiness, unless industry be cherished and protected, and property secured. Suppose a poor man becomes rich by honest labor, and increases the public stock of wealth: shall his reward be the loss of that liberty he set out with? Will you take away every stimulus to industry, by declaring that he shall not retain the fruits of it? The idea of the poor becoming rich by assiduity is not mere fancy. I am old enough, and have had sufficient experience, to know the effects of it. I have often known persons, commencing in life without any other stock but industry and economy, by the mere efforts of these, rise to opulence and wealth. This could not have been the case without a government to protect their industry. In my mind the true principle of republicanism, and the great-

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est security of liberty, is regular government. Perhaps I may not be a republican, but this is my idea. In reviewing the history of the world, shall we find an instance where any society retained its liberty without government? As I before hinted, the smallest society in extent, to the greatest empire, can only be preserved by a regular government, to suppress that faction and turbulence so natural to many of our species. What do men do with those passions when they come into society? Do they leave them? No; they bring them with them. These passions, which they thus bring into society, will produce disturbances, which, without any check, will overturn it.

A distinction has been made, which surprised me, between the *illumined* mind and the *ignorant*. I have heard with pleasure, in other places, that worthy gentleman expatiate on the advantages of learning — among other things, as friendly to liberty. I have seen, in our code of laws, the *public* purse applied to cherish *private* seminaries. This is not strictly just; but with me the end sanctified the means, and I was satisfied. But did we thus encourage learning, to set up those who attained its benefits as butts of invidious distinction? Surely the worthy member, on reflection, will disavow the idea. He learns to little purpose, indeed, who vainly supposes himself become, from the circumstance, of an order of beings superior to the honest citizens — peasants if you please to term them so — who, in their labor, produce great good to the community. But those illumined minds who apply their knowledge to promote and cherish liberty — equal liberty to all, the peasant as well as others — give to society the real blessings of learning.

I have seen learning used both ways; but have had pleasure in observing, that lately the latter fruits only have generally appeared, which I attribute to the influence of republican principles, and a regard for true liberty. Am I still suspected of want of attachment for my worthy fellow-citizens, whom the gentleman calls peasants and cottagers? Let me add one more observation. I cannot leave them in the state in which he has placed them — in the parallel between them and those of Switzerland, the United Netherlands, and Great Britain. The peasants of the Swiss cantons trade in war. Trained in arms, they become the mercenaries of the best bidder, to carry on the destruction of

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mankind, as an occupation, where they have not even resentment. Are these a fit people for a comparison with our worthy planters and farmers, in their drawing food and raiment, and even wealth, by honest labor, from the bowels of the earth, where an inexhaustible store is placed by a bountiful Creator?

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

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

The happiness of the people is the object of this government, and the people are therefore made the fountain of all power. They cannot act personally, and must delegate powers. Here the worthy gentleman who spoke last, and I, travelling not together indeed, but in sight, are placed at an immeasurable distance — as far as the poles asunder. He recommends a government more energetic and strong than this, abundantly too strong ever to receive my approbation, — a first magistrate borrowed from Britain, to whom you are to make a surrender of your liberty; and you give him a separate interest from yours. You intrench that interest by powers and prerogatives undefined — implant in him self-love, from the influence of which he is to do, what — to promote your interest in opposition to his own? An operation of self-love which is new! Having done this, you accept from him a charter of the rights you have parted with; present him a bill of rights, telling him, Thus far shall you oppress us, and no farther.

It still depends on him whether he will give you that charter, or allow the operation of the bill of rights. He will do it as long as he cannot do otherwise, but no longer. Did ever any free people in the world, not dictated to by the sword of a conqueror, or by circumstances into which licentiousness may have plunged them, place themselves in so degrading a situation, or make so disgraceful a sacrifice of their liberty? If they did, sure I am that the example will not be followed by this Convention. This is not all: we are to look somewhere for the chosen few to go into the ten miles square, with extensive powers for life, and thereby destroy every degree of true responsibility. Is there no medium,

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or shall we recur to extremes? As a republican, sir, I think that the security of the liberty and happiness of the people, from the highest to the lowest, being the object of government, the people are consequently the fountain of all power.

They must, however, delegate it to agents, because, from their number, dispersed situation, and many other circumstances, they cannot exercise it in person. They must therefore, by frequent and certain elections, choose representatives to whom they trust it.

Is there any distinction in the exercise of this delegation of power? The man who possesses twenty-five acres of land has an equal right of voting for a representative with the man who has twenty-five thousand acres. This equality of suffrage secures the people in their property. While we are in pursuit of checks, and balances, and proper security in the delegation of power, we ought never to lose sight of the representative character. By this we preserve the great principle of the primary right of power in the people; and should deviations happen from our interest, the spirit of liberty, in future elections, will correct it — a security I esteem far superior to paper bills of rights.

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

There will be deviations even in our state legislatures thus constituted. I say (and I hope to give no offence when I do) there have been some. I believe every gentleman will see that it is unconstitutional to condemn any man without

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a fair trial. Such a condemnation is repugnant to the principles of justice. It is contrary to the Constitution, and the spirit of the common law. Look at the bill of rights. You find there that no man shall be condemned without being confronted with his accusers and witnesses; that every man has a right to call for evidence in his favor, and, above all, to a speedy trial by an impartial jury of the vicinage, without whose unanimous consent he cannot be found guilty. These principles have not been attended to; an instance has been mentioned already, where they have been in some degree violated.

[Here Mr. Pendleton spoke so very low that he could not be heard.]

My brethren in that department [*the judicial*] felt great uneasiness in their minds to violate the Constitution by such a law. They have prevented the operation of some unconstitutional acts. Notwithstanding those violations, I rely upon the principles of the government — that it will produce its own reform, by the responsibility resulting from frequent elections. We are finally safe while we preserve the representative character. I made these observations as introductory to the consideration of the paper on your table. I conceive that, in those respects where our state Constitution has not been disapproved of, objections will not apply against that on our table. When we were forming our state Constitution, we were confined to local circumstances. In forming a government for the Union, we must consider our situation as connected with our neighboring states. We have seen the advantages and blessings of the Union. Every intelligent and patriotic mind must be convinced that it is essential to our happiness. God grant we may never see the disadvantages of disunion!

To come to the great object of direct taxation, more immediately under consideration: — If we find it our interest to be intimately connected with the other twelve states, to establish one common government, and bind in one ligament the strength of thirteen states, we shall find it necessary to delegate powers proportionate to that end; for the delegation of adequate powers in this government is no less necessary than in our state government. To whom do we delegate these powers? To our own representatives. Why should we fear so much greater dangers from our represen-

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tatives there, than from those we have here? Why make so great a distinction between our representatives here, and in the federal government, where every branch is formed on the same principle — preserving throughout the representative, responsible character? We have trusted our lives, and every thing, to our state representatives. We have particularly committed our purse to them, with unlimited confidence. I never heard any objection to it; I am sure I make none. We ought to contribute our share of fixing the principles of the government. Here the representative character is still preserved. We are to have an equal share in the representation of the general government, should we ratify this Constitution. We have hitherto paid more than our share of taxes for the support of the government, &c. But by this system we are to pay our equal, ratable share only. Where is the danger of confiding in our federal representatives? We must choose those in whom we can put the greatest confidence. They are only to remain two years in office. Will they in that time lose all regard for the principles of honor, and their character, and become abandoned prostitutes of our rights? I have no such fear. When power is in the hands of my representatives, I care not whether they meet here or a hundred miles off.

A gentleman (Mr. Monroe) has said that the power of direct taxation was unnecessary, because the imposts and back lands would be abundantly sufficient to answer all federal purposes. If so, what are we disputing about? I ask the gentleman who made the observation, and this committee, if they believe that Congress will ever lay direct taxes if the other funds are sufficient. It will then remain a harmless power upon paper, and do no injury. If it should be necessary, will gentlemen run the risk of the Union by withholding it? I was sorry to hear the subjects of requisitions and taxation misinterpreted. The latter has been compared to taxation by Great Britain without our own consent. The two cases are by no means similar. The king of Great Britain has not the purse, though he holds the sword. He has no means of using the sword but by requisitions on those who hold the purse. He applied to the British Parliament; and they were pleased to trust him with our money. We declared, as we had a right, that we ought to be taxed by our own representatives, and that therefore their disposing

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of our money without our consent was unjust. Here requisitions are to be made by one body of our representatives to another. Why should this be the case, when they are both possessed of our equal confidence — both chosen in the same manner, and equally responsible to us?

But we are told that there will be a war between the two bodies equally our representatives, and that the state government will be destroyed, and consolidated into the general government. I stated before, that this could not be so. The two governments act in different manners, and for different purposes — the general government in great national concerns, in which we are interested in common with other members of the Union; the state legislature in our mere local concerns. Is it true, or merely imaginary, that the state legislatures will be confined to the care of bridges and roads? I think that they are still possessed of the highest powers. Our dearest rights, — life, liberty, and property, — as Virginians, are still in the hands of our state legislature. If they prove too feeble to protect us, we resort to the aid of the general government for security. The true distinction is, that the two governments are established for different purposes, and act on different objects; so that, notwithstanding what the worthy gentleman said, I believe I am still correct, and insist that, if each power is confined within its proper bounds, and to its proper objects, an interference can never happen. Being for two different purposes, as long as they are limited to the different objects, they can no more clash than two parallel lines can meet. Both lay taxes, but for different purposes. The same officers may be used by both governments, which will prevent a number of inconveniences. If an invasion, or insurrection, or other misfortune, should make it necessary for the general government to interpose, this will be for the general purposes of the Union, and for the manifest interest of the states.

I mentioned formerly that it would never be the interest of the general government to destroy the state governments. From these it will derive great strength: for if *they* be possessed of power, they will assist *it;* if *they* become feeble, or decay, the general government must likewise become weak, or moulder away.

But we are alarmed on account of Kentucky. We are told that the Mississippi is taken away. When gentlemen say

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that seven states are now disposed to give it up, and that it *will* be given up by the operation of this government, are they correct? It must be supposed that, on occasions of great moment, the senators from all the states will attend. If they do, there will be no difference between this Constitution and the Confederation in this point. When they are all present, two thirds of them will consist of the senators from nine states, which is the number required by the existing system to form treaties. The consent of the President, who is the representative of the Union, is also necessary. The right to that river must be settled by the sword, or negotiation. I understood that the purpose of that negotiation which has been on foot, was, that Spain should have the navigation of that river for twenty-five years, after which we were peaceably to retain it forever. This, I was told, was all that Spain required. If so, the gentleman who differed in opinion from others, in wishing to gratify Spain, must have been actuated by a conviction that it would be better to have the right fixed in that manner than trust to uncertainty. I think the inhabitants of that country, as well as of every other part of the Union, will be better protected by an efficient, firm government, than by the present feeble one. We shall have also a much better chance for a favorable negotiation, if our government be respectable, than we have now. It is also suggested that the citizens of the western district run the risk of losing their lands if this Constitution be adopted. I am not acquainted with the circumstances of the title set up to those lands. But this I know, that it is founded, not upon any claim commenced during the revolution, but on some latent claim that existed before that period. It was brought before our Assembly, and rejected — I suppose because *they thought* it would, at this late period, involve the just and unjust, indiscriminately, in distress. I am bold to say that no assistance can be given by the Constitution to the claimants. The federal legislature is not authorized to pass any law affecting claims that existed before. If the claim is brought forth, it must be before the court of the state, on the ground on which it now stands, and must depend on the same principles on which it now depends. Whether this Constitution be adopted or not, will not affect the parties in this case. It will make no difference as to the principles on which the decision will be made,

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whether it will come before the state court or the federal court. They will be both equally independent, and ready to decide in strict conformity to justice. I believe the federal courts will be as independent as the state courts. I should no more hesitate to trust my liberty and property to the one than the other. Whenever, in any country in the world, the judges are independent, property is secure. The existence of Great Britain depends on that purity with which justice is administered. When gentlemen will therefore find that the federal legislature cannot affect preëxisting claims by their legislation, and the federal courts are on the same ground with the state courts, I hope there will be no ground of alarm.

Permit me to deliver a few sentiments on the great and important subject of previous and subsequent amendments. When I sat down to read that paper, I did not read it with an expectation that it was perfect, and that no man would object to it. I had learned, sir, that an expectation of such perfection in any institute devised by *man*, was as vain as the search for the philosopher's stone. I discovered objections — I thought I saw there some sown seeds of disunion — not in the immediate operation of the government, but which *might* happen in some future time. I wish amendments to remove these. But these remote possible errors may be eradicated by the amendatory clause in the Constitution. I see no danger in making the experiment, since the system itself points out an easy mode of removing any errors which shall have been experienced. In this view, then, I think we may safely trust in the government. With respect to the eight states who have already acceded to it, do gentlemen believe that, should we propose amendments as the *sine qua non* of our adoption, they would listen to our proposals? I conceive, sir, that they would not retract. They would tell us — *No, gentlemen, we cannot accept of your conditions. You put yourselves upon the ground of opposition. Your amendments are dictated by local considerations. We, in our adoption, have been influenced by considerations of general utility to the Union. We cannot abandon principles, like these, to gratify you.* Thus, sir, by previous amendments, we present a hostile countenance. If, on the contrary, we imitate the conduct of those states, our language will be conciliatory and friendly. Gentlemen, we put ourselves on the same ground that you are on. We are not actuated by local considera-

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tions, but by such as affect the people of America in general. This conduct will give our amendments full weight.

I was surprised when I heard introduced the opinion of a gentleman (Mr. Jefferson) whom I highly respect. I know the great abilities of that gentleman. Providence has, for the good of mankind, accompanied those extensive abilities with a disposition to make use of them for the good of his fellow-beings; and I wish, with all my heart, that he was here to assist us on this interesting occasion. As to his letter, impressed as I am with the force of his authority, I think it was improper to introduce it on this occasion. The opinion of a private individual, however enlightened, ought not to influence our decision. But, admitting that this opinion ought to be conclusive with us, it strikes me in a different manner from the honorable gentleman. I have seen the letter in which this gentleman has written his opinion upon this subject. It appears that he is possessed of that Constitution, and has in his mind the idea of amending it — he has in his mind the very question, of subsequent or previous amendments, which is now under consideration. His sentiments on this subject are as follows: "I wish, with all my soul, that the nine first conventions may accept the new Constitution, because it will secure to us the good it contains, which I think great and important. I wish the four latest, whichever they be, may refuse to accede to it till amendments are secured." He then enumerates the amendments which he wishes to be secured, and adds, "We must take care, however, that neither this nor any other objection to the form, produce a schism in our Union. That would be an incurable evil; because friends falling out never cordially reunite." Are these sentiments in favor of those who wish to prevent its adoption by previous amendments? He wishes the first nine states to adopt it. What are his reasons? Because he thinks it will secure to us the good it contains, which he thinks *great* and *important;* and he wishes the other four may refuse it, because he thinks it may tend to obtain necessary amendments. But he would not wish that a schism should take place in the Union on any consideration. If, then, we are to be influenced by his opinion at all, we shall ratify it, and secure thereby the good it contains. The Constitution points out a plain and ordinary method of reform, without any disturbance or convulsions

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whatever. I therefore think that we ought to ratify it, in order to secure the Union, and trust to this method for removing those inconveniences which experience shall point out.

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

Mr. MADISON. Mr. Chairman: finding, sir, that the clause more immediately under consideration still meets with the disapprobation of the honorable gentleman over the way, (Mr. Grayson,) and finding that the reasons of the opposition, as further developed, are not satisfactory to myself and others who are in favor of the clause, I wish that it may meet with the most thorough and complete investigation. I beg the attention of the committee, in order to obviate what fell from the honorable gentleman. He set forth that, by giving up the power of taxation, we should give up every thing, and still insists on requisitions being made on the states, and then, if they be not complied with, Congress shall lay direct taxes, by way of penalty. Let us consider the dilemma which arises from this doctrine. Either requisitions will be efficacious, or they will not. If they will be efficacious, then I say, sir, we give up every thing as much as by direct taxation.

The same amount will be paid by the people as by direct taxes. If they be not efficacious, where is the advantage of this plan? In what respect will it relieve us from the inconveniences which we have experienced from requisitions? The power of laying direct taxes by the general government is supposed by the honorable gentleman to be chimerical and impracticable. What is the consequence of the alternative he proposes? We are to rely upon this power to be ultimately used as a penalty to compel the states to comply. If it be chimerical and impracticable in the first instance, it will be equally so when it will be exercised as a penalty. A reference was made to concurrent executions as an instance of the possibility of interference between the two governments.

[Here Mr. Madison spoke so low that he could not be distinctly heard.]

This has been experienced under the state governments without involving any inconvenience. But it may be answered that, under the state governments, concurrent exe-

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cutions cannot produce the inconvenience here dreaded, because they are executed by the same officer. Is it not in the power of the general government to employ the state officers? Is nothing to be left to future legislation, or must every thing be immutably fixed in the Constitution? Where exclusive power is given to the Union, there can be no interference. Where the general and state legislatures have concurrent power, such regulations will be made as shall be found necessary to exclude interferences and other inconveniences. It will be their interest to make regulations.

It has been said that there is no similarity between petty corporations and independent states. I admit that, in many points of view, there is a great dissimilarity; but in others, there is a striking similarity between them, which illustrates what is before us. Have we not seen, in our own country, (as has been already suggested in the course of the debates,) concurrent collections of taxes going on at once, without producing any inconvenience? We have seen three distinct collections of taxes, for three distinct purposes. Has it not been possible for collections of taxes, for parochial, county, and state purposes, to go on at the same time? Every gentleman must know that this is now the case; and though there be a subordination in these cases which will not be in the general government, yet in practice it has been found that these different collections have been concurrently carried on, with convenience to the people, without clashing with one another, and without deriving their harmony from the circumstance of being subordinate to one legislative body. The taxes will be laid for different purposes. The members of the one government, as well as of the other, are the agents of, and subordinate to, the people. I conceive that the collection of the taxes of the one will not impede that of the other, and that there can be no interference. This concurrent collection appears to me neither chimerical nor impracticable.

He compares resistance of the people to collectors to refusal of requisitions. This goes against all government. It is as much as to urge that there should be no legislature. The gentlemen, who favored us with their observations on this subject, seemed to reason on a supposition that the general government was confined, by the paper on your table, to lay general, uniform taxes. Is it necessary that there should be

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a tax on any given article throughout the United States? It is represented to be oppressive, that the states which have slaves, and make tobacco, should pay taxes on these for federal wants, when other states, which have them not, would escape. But does the Constitution on the table admit of this? On the contrary, there is a proportion to be laid on each state, according to its population. The most proper articles will be selected in each state. If one article, in any state, should be deficient, it will be laid on another article. Our state is secured on this foundation. Its proportion will be commensurate to its population. This is a constitutional scale, which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds. If the taxes be not uniform, and the representatives of some states contribute to lay a tax of which they bear no proportion, is not this principle reciprocal? Does not the same principle hold in our state government in some degree? It has been found inconvenient to fix on uniform objects of taxation in this state, as the back parts are not circumstanced like the lower parts of the country. In both cases, the reciprocity of the principle will prevent a disposition in one part to oppress the other. My honorable friend seems to suppose that Congress, by the possession of this ultimate power as a penalty, will have as much credit, and will be as able to procure any sums, on any emergency, as if they were possessed of it in the first instance; and that the votes of Congress will be as competent to procure loans as the votes of the British Commons. Would the votes of the British House of Commons have that credit which they now have, if they were liable to be retarded in their operation, and, perhaps, rendered ultimately nugatory, as those of Congress must be by the proposed alternative? When their vote passes, it usually receives the concurrence of the other branch; and it is known that there is sufficient energy in the government to carry it into effect.

But here the votes of Congress are, in the first place, dependent on the compliance of thirteen different bodies, and, after non-compliance, are liable to be opposed and defeated by the jealousy of the states against the exercise of this power, and by the opposition of the people, which may be expected if this power be exercised by Congress after partial compliances. These circumstances being known, Congress could not command one shilling. My honorable friend

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seems to think that we ought to spare the present generation, and throw our burdens upon posterity. I will not contest the equity of this reasoning; but I must say that good policy, as well as views of economy, strongly urges us, even to distress ourselves to comply with our most solemn engagements. We must take effectual provision for the payment of the interest of our public debts. In order to do justice to our creditors, and support our credit and reputation, we must lodge power somewhere or other for this purpose. As yet the United States have not been able, by any energy contained in the old system, to accomplish this end.

Our creditors have a right to demand the principal, but would be satisfied with a punctual payment of the interest. If we have been unable to pay the interest, much less shall we be able to discharge the principal. It appears to me that the whole reasoning used on this occasion shows that we ought to adopt this system, to enable us to throw our burdens on posterity. The honorable member spoke of the *decemviri* at Rome as having some similitude to the ten representatives who are to be appointed by this state. I can see no point of similitude here, to enable us to draw any conclusion. For what purpose were the *decemviri* appointed? They were invested with a plenipotentiary commission to make a code of laws. By whom were they appointed? By the people at large? My memory is not infallible, but it tells me they were appointed by the senate, — I believe, in the name of the people. If they were appointed by the senate, and composed of the most influential characters among the nobles, can any thing be inferred from that against our federal representatives? Who made a discrimination between the nobles and the people? The senate.

Those men totally perverted the powers which were given them, for the purpose above specified, to the subversion of the public liberty. Can we suppose that a similar usurpation might be made by men appointed in a totally different manner? As their circumstances were totally dissimilar, I conceive that no arguments drawn from that source can apply to this government. I do not thoroughly comprehend the reasoning of my honorable friend, when he tells us that the federal government will predominate, and that the state interest will be lost, when, at the same time, he tells us that it will be a faction of seven states. If seven states will pre-

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vail, *as states*, I conceive that state influence will prevail. If state influence, under the present feeble government, has prevailed, I think that a remedy ought to be introduced, by giving the general government power to suppress it.

He supposed that my argument with respect to a future war between Great Britain and France was fallacious. The other nations of Europe have acceded to that neutrality, while Great Britain opposed it. We need not expect, in case of such a war, that we should be suffered to participate in the profitable emoluments of the carrying trade, unless we were in a respectable situation. Recollect the last war. Was there ever a war in which the British nation stood opposed to so many nations? All the belligerent nations in Europe, with nearly one half of the British empire, were united against it. Yet that nation, though defeated, and humbled beyond any previous example, stood out against this. From her firmness and spirit in such desperate circumstances, we may divine what her future conduct may be.

I did not contend that it was necessary for the United States to establish a navy for that sole purpose, but instanced it as one reason, out of several, for rendering ourselves respectable. I am no friend to naval or land armaments in time of peace; but if they be necessary, the calamity must be submitted to. Weakness will invite insults. A respectable government will not only entitle us to a participation of the advantages which are enjoyed by other nations, but will be a security against attacks and insults. It is to avoid the calamity of being obliged to have large armaments that we should establish this government. The best way to avoid danger is to be in a capacity to withstand it.

The impost, we are told, will not diminish, because the emigrations to the westward will prevent the increase of population. He has reasoned on this subject justly to a certain degree. I admit that the imposts will increase, till population becomes so great as to compel us to recur to manufactures. The period cannot be very far distant when the unsettled parts of America will be inhabited. At the expiration of twenty-five years hence, I conceive that, in every part of the United States, there will be as great a population as there is now in the settled parts. We see, already, that, in the most populous parts of the Union, and where there is but a medium, manufactures are beginning to be established.

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Where this is the case, the amount of importation will begin to diminish. Although the impost may even increase during the term of twenty-five years, yet when we are preparing a government for perpetuity, we ought to found it on permanent principles, and not on those of a temporary nature.

Holland is a favorite quotation with honorable members on the other side of the question. Had not their sentiments been discovered by other circumstances, I should have concluded, from their reasonings on this occasion, that they were friends of the Constitution. I should suppose that they had forgotten which side of the question they were on. Holland has been called a republic, and a government friendly to liberty. Though it may be greatly superior to some other governments in Europe, still it is not a republic or a democracy. Their legislature consists, in some degree, of men who legislate for life. Their councils consist of men who hold their offices for life, who fill up offices and appoint their salaries themselves. The people have no agency, mediate or immediate, in the government. If we look at their history, we shall find that every mischief which has befallen them has resulted from the existing confederacy. If the stadtholder has been productive of mischiefs, if we ought to guard against such a magistrate more than any evil, let me beseech the honorable gentleman to take notice of what produced that, and those troubles which have interrupted their tranquillity from time to time. The weakness of their confederacy produced both.

When the French arms were ready to overpower their republic, and they were feeble in the means of defence, which was principally owing to the violence of parties, they then appointed a stadtholder, who sustained them. If we look at more recent events, we shall have a more pointed demonstration that their political infelicity arises from the imbecility of their government. In the late disorders, the states were almost equally divided — three provinces on one side, three on the other, and the other divided. One party inclined to the Prussians, and the other to the French. The situation of France did not admit of her interposing immediately in their disputes by an army; that of the Prussians did. A powerful and large army marched into Holland, and compelled the other party to surrender. We know the distressing consequences to the people. What produced

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those disputes and the necessity of foreign interference, but the debility of their confederacy? We may be warned by their example, and shun their fate, by removing the causes which produced their misfortunes. My honorable friend has referred to the transaction of the federal council with respect to the navigation of the Mississippi. I wish it was consistent with delicacy and prudence to lay a complete view of the whole matter before this committee. The history of it is singular and curious, and perhaps its origin ought to be taken into consideration.

I will touch on some circumstances, and introduce nearly the substance of most of the facts relative to it, that I may not seem to shrink from explanation. It was soon perceived, sir, after the commencement of the war with Britain, that, among the various objects that would affect the happiness of the people of America, the navigation of the Mississippi was one. Throughout the whole history of foreign negotiation, great stress was laid on its preservation. In the time of our greatest distresses, and particularly when the Southern States were the scene of war, the Southern States cast their eyes around to be relieved from their misfortunes. It was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that, for so substantial a consideration, Spain might be induced to afford decisive succor. It was opposed by the Northern and Eastern States. They were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the western country. But so it was, that the Southern States were for it, and the Eastern States opposed to it. Since obtaining that happy peace, which secures to us all our claims, this subject has been taken again into consideration, and deliberated upon in the federal government. A temporary relinquishment has been agitated. Several members from the different states, but particularly from the Northern, were for a temporary surrender, because it would terminate disputes, and, at the end of the short period for which it was to be given, the right would revert, of course, to those who had given it up; and for this temporary surrender some commercial advantages were offered. For my part, I consider this measure, though founded on considerations plausible and honorable, was yet not justifiable but on grounds of inevitable necessity. I must declare, in justice

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to many characters who were in Congress, that they declared that they never would enter into the measure, unless the situation of the United States was such as could not prevent it.

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

What was the cause of those states being the champions of this right when the Southern States were disposed to surrender it? The preservation of this right will be for the general interest of the Union. The western country will be settled from the north as well as the south, and its prosperity will add to the strength and security of the Union. I am not able to recollect all those circumstances which would be necessary to give gentlemen a full view of the subject. I can only add, that I conceive that the establishment of the new government will be the best possible means of securing our rights, as well in the western parts as elsewhere. I will not sit down till I make one more observation on what fell from my honorable friend. He says that the true difference between the states lies in this circumstance — that some are carrying states and others productive, and that the operation of the new government will be, that there will be a plurality of the former to combine against the interest of the latter, and that consequently it will be dangerous to put it in their power to do so. I would join with him in sentiments, if this were the case. Were this within the bounds of probability, I should be equally alarmed; but I think that those states, which are contradistinguished, as carrying states, from the non-importing states, will be but few. I suppose the Southern States will be considered by all as under the latter description. Some other states have been mentioned by an honorable member on the same side, which are not considered as carrying states. New Jersey

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and Connecticut can by no means be enumerated among the carrying states. They receive their supplies through New York. Here, then, is a plurality of non-importing states. I could add another, if necessary. Delaware, though situated upon the water, is upon the list of non carrying states. I might say that a great part of New Hampshire is so. I believe a majority of the people of that state receive their supplies from Massachusetts, Rhode Island, and Connecticut. Might I not add all those states which will be admitted hereafter into the Union? These will be non-carrying states, and will support Virginia in case the carrying states will attempt to combine against the rest. This objection must therefore fall to the ground. My honorable friend has made several other remarks, but I will defer saying any more till we come to those parts to which his objections refer.

Mr. HENRY. Mr. Chairman, once more I find it necessary to trespass on your patience. An honorable gentleman, several days ago, observed, that the great object of this government was justice. We were told before, that the greater consideration was union. However, the consideration of justice seems to have been what influenced his mind when he made strictures on the proceedings of the Virginia Assembly. I thought the reasons of that transaction had been sufficiently explained.

It is exceedingly painful to me to be objecting; but I must make a few observations. I shall not again review the catalogue of dangers which the honorable gentleman entertained us with. They appear to me absolutely imaginary. They have, in my conception, been proved to be such.

But sure I am that the dangers of this system are real, when those who have no similar interests with the people of this country are to legislate for us — when our dearest interests are left in the power of those whose advantage it may be to infringe them. How will the quotas of troops be furnished? *Hated* as requisitions are, your federal officers cannot collect troops, like dollars, and carry them in their pockets. You must make those *abominable* requisitions for them, and the scale will be in proportion to the number of your blacks, as well as your whites, unless they violate the constitutional rule of apportionment. This is not calculated to rouse the fears of the people. It is founded in truth

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How oppressive and dangerous must this be to the Southern States, who alone have slaves! This will render their proportion infinitely greater than that of the Northern States. It has been openly avowed that this shall be the rule. I will appeal to the judgments of the committee, whether there be danger. The honorable gentleman said that there was no precedent for *this* American revolution. We have precedents in abundance. They have been drawn from Great Britain. Tyranny has arisen there in the same manner in which it was introduced among the Dutch. The tyranny of Philadelphia may be like the tyranny of George III. I believe this similitude will be incontestably proved before we conclude.

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

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the great middle state, and Virginia, the great southern state, shall have adopted this government? Where will you find magnanimity enough to reject it? Should the remaining states have this magnanimity, they will not have sufficient weight to have the government altered. This state has weight and importance. Her example will have powerful influence — her rejection will procure amendments. Shall we, by our adoption, hazard the loss of amendments? Shall we forsake that importance and respectability which our station in America commands, in hopes that relief will come from an obscure part of the Union? I hope my countrymen will spurn at the idea.

The necessity of amendments is universally admitted. It is a word which is reëchoed from every part of the continent. A majority of those who hear me think amendments are necessary. Policy tells us they are necessary. Reason, self-preservation, and every idea of propriety, powerfully urge us to secure the dearest rights of human nature. Shall we, in direct violation of these principles, rest this security upon the uncertainty of its being obtained by a few states, more weak and less respectable than ourselves, and whose virtue and magnanimity may be overborne by the example of so many adopting states? *Poor* Rhode-Island, and North Carolina, and even New York, surrounded with federal walls on every side, may not be magnanimous enough to reject; and if they do reject it, they will have but little influence to obtain amendments. I ask, if amendments be necessary, from whence can they be so properly proposed as from this state? The example of Virginia is a powerful thing, particularly with respect to North Carolina, whose supplies must come *through* Virginia. Every possible opportunity of procuring amendments is gone, our power and political salvation are gone, if we ratify unconditionally. The important right of making treaties is upon the most dangerous foundation. The President, and a few senators, possess it in the most unlimited manner, without any real responsibility, if, from sinister views, they should think proper to abuse it; for they may keep all their measures in the most profound secrecy, as long as they please. Were we not told that war was the case wherein secrecy was the most necessary? But, by the paper on your table, their secrecy is not limited to this case only. It is as unlimited and unbounded as their

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powers. Under the abominable veil of political secrecy and contrivance, your most valuable rights may be sacrificed by a most corrupt faction, without having the satisfaction of knowing who injured you. They are bound by honor and conscience to act with integrity, but they are under no constitutional restraint. The navigation of the Mississippi, which is of so much importance to the happiness of the people of this country, may be lost by the operation of that paper. There are seven states now decidedly opposed to this navigation. If it be of the highest consequence to know who they are who shall have voted its relinquishment, the federal veil of secrecy will prevent that discovery. We may labor under the magnitude of our miseries without knowing or being able to punish those who produced them. I did not wish that transactions relative to treaties should, when unfinished, be exposed; but it should be known, after they were concluded, who had advised them to be made, in order to secure some degree of certainty that the public interest shall be consulted in their formation.

We are told that all powers not given are reserved. I am sorry to bring forth hackneyed observations. But, sir, important truths lose nothing of their validity or weight, by frequency of repetition. The English history is frequently recurred to by gentlemen. Let us advert to the conduct of the people of that country. The people of England lived without a declaration of rights till the war in the time of Charles I. That king made usurpations upon the rights of the people. Those rights were, in a great measure, before that time undefined. Power and privilege then depended on implication and logical discussion. Though the declaration of rights was obtained from that king, his usurpations cost him his life. The limits between the liberty of the people, and the prerogative of the king, were still not clearly defined.

The rights of the people continued to be violated till the Stuart family was banished, in the year 1688. The people of England magnanimously defended their rights, banished the tyrant, and prescribed to William, Prince of Orange, by the bill of rights, on what terms he should reign; and this bill of rights put an end to all construction and implication. Before this, sir, the situation of the public liberty of England was dreadful. For upwards of a century, the nation was

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involved in every kind of calamity, till the bill of rights put an end to all, by defining the rights of the people, and limiting the king's prerogative. Give me leave to add (if I can add any thing to so splendid an example) the conduct of the American people. They, sir, thought a bill of rights necessary. It is alleged that several states, in the formation of their government, omitted a bill of rights. To this I answer, that they had the substance of a bill of rights contained in their constitutions, which is the same thing. I believe that Connecticut has preserved it, by her Constitution, her royal charter, which clearly defines and secures the great rights of mankind — secures to us the great, important rights of humanity; and I care not in what form it is done.

Of what advantage is it to the American Congress to take away this great and general security? I ask, Of what advantage is it to the public, or to Congress, to drag an unhappy debtor, not for the sake of justice, but to gratify the malice of the plaintiff, with his witnesses, to the federal court, from a great distance? What was the principle that actuated the Convention in proposing to put such dangerous powers in the hands of any one? Why is the trial by jury taken away? All the learned arguments that have been used on this occasion do not prove that it is secured. Even the advocates for the plan do not all concur in the certainty of its security. Wherefore is religious liberty not secured? One honorable gentleman, who favors adoption, said that he had had his fears on the subject. If I can well recollect, he informed us that he was perfectly satisfied, by the powers of reasoning, (with which he is so happily endowed,) that those fears were not well grounded. There is many a religious man who knows nothing of argumentative reasoning; there are many of our most worthy citizens who cannot go through all the labyrinths of syllogistic, argumentative deductions, when they think that the rights of conscience are invaded. This sacred right ought not to depend on constructive, logical reasoning.

When we see men of such talents and learning compelled to use their utmost abilities to convince themselves that there is no danger, is it not sufficient to make us tremble? Is it not sufficient to fill the minds of the ignorant part of men with fear? If gentlemen believe that the apprehensions of men will be quieted, they are mistaken,

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since our best-informed men are in doubt with respect to the security of our rights. Those who are not so well informed will spurn at the government. When our common citizens, who are not possessed with such extensive knowledge and abilities, are called upon to change their bill of rights (which, in plain, unequivocal terms, secures their most valuable rights and privileges) for construction and implication, will they implicitly acquiesce? Our declaration of rights tells us that "all men are by nature free and independent," &c. [Here Mr. Henry read the declaration of rights.] Will they exchange these rights for logical reasons? If you had a thousand acres of land dependent on this, would you be satisfied with logical construction? Would you depend upon a title of so disputable a nature? The present opinions of individuals will be buried in entire oblivion when those rights will be thought of. That sacred and lovely thing, religion, ought not to rest on the ingenuity of logical deduction. Holy religion, sir, will be prostituted to the lowest purposes of human policy. What has been more productive of mischief among mankind than religious disputes? Then here, sir, is a foundation for such disputes, when it requires learning and logical deduction to perceive that religious liberty is secure.

The honorable member told us that he had doubts with respect to the judiciary department. I hope those doubts will be explained. He told us that his object was union. I admit that the reality of union, and not the name, is the object which most merits the attention of every friend to his country. He told you that you should hear many great, *sounding words* on our side of the question. We have heard the word *union* from him. I have heard no word so often pronounced in this house as he did this. I admit that the American Union is dear to every man. I admit that every man, who has three grains of information, must know and think that union is the best of all things. But, as I said before, we must not mistake the end for the means. If he can show that the rights of the Union are secure, we will consent. It has been sufficiently demonstrated that they are not secured. It sounds mighty prettily to gentlemen, to curse paper money and honestly pay debts. But apply to the situation of America, and you will find there are thousands and thousands of contracts, whereof equity forbids an

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exact literal performance. Pass that government, and you will be bound hand and foot. There was an immense quantity of depreciated Continental paper money in circulation at the conclusion of the war. This money is in the hands of individuals to this day. The holders of this money may call for the nominal value, if this government be adopted. This state may be compelled to pay her proportion of that currency, pound for pound. Pass this government, and you will be carried to the federal court, (if I understand that paper right,) and you will be compelled to pay shilling for shilling. I doubt on the subject; at least, as a public man, I ought to have doubts. A state may be sued in the federal court, by the paper on your table. It appears to me, then, that the holder of the paper money may require shilling for shilling. If there be any latent remedy to prevent this, I hope it will be discovered.

The precedent, with respect to the union between England and Scotland, does not hold. The union of Scotland speaks in plain and direct terms. Their privileges were particularly secured. It was expressly provided that they should retain their own particular laws. Their nobles have a right to choose representatives to the number of sixteen. I might thus go on and specify particulars; but it will suffice to observe, generally, that their rights and privileges were expressly and unequivocally reserved. The power of direct taxation was not given up by the Scotch people. There is no trait in that union which will maintain their arguments. In order to do this, they ought to have proved that Scotland united without securing their rights, and afterwards got that security by subsequent amendments. Did the people of Scotland do this? No, sir; like a sensible people, they trusted nothing to hazard. If they have but forty-five members, and those be often corrupted, these defects will be greater here. The number will be smaller, and they will be consequently the more easily corrupted. Another honorable gentleman advises us to give this power, in order to exclude the necessity of going to war. He wishes to establish national credit, I presume, and imagines that, if a nation has public faith, and shows a disposition to comply with her engagements, she is safe among ten thousand dangers. If the honorable gentleman can prove that this paper is calculated to give us public faith, I will be satisfied. But if

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you be in constant preparation for war, on such airy and imaginary grounds as the mere possibility of danger, your goverment must be military, which will be inconsistent with the enjoyment of liberty.

But, sir, we must become formidable, and have a strong government, to protect us from the British nation. Will the paper on the table prevent the attacks of the British navy, or enable us to raise a fleet equal to the British fleet? The British have the strongest fleet in Europe, and can strike any where. It is the utmost folly to conceive that the paper can have such an operation. It will be no less so to attempt to raise a powerful fleet. With respect to requisitions, I beseech gentlemen to consider the importance of the subject. We, who are for amendments, propose (as has been frequently mentioned) that a requisition shall be made for two hundred thousand pounds, for instance, instead of direct taxation, and that, if it be not complied with, then it shall be raised by direct taxes. We do not wish to have strength, to refuse to pay them, but to possess the power of raising the taxes in the most easy mode for the people. But, says he, you may delay us by this mode. Let us see if there be not sufficient to counterbalance this evil. The oppression arising from taxation is not from the amount, but from the mode: a thorough acquaintance with the condition of the people is necessary to a just distribution of taxes. The whole wisdom of the science of government, with respect to taxation, consists in selecting that mode of collection which will best accommodate the convenience of the people. When you come to tax a great country, you will find that ten men are too few to settle the manner of collection. One capital advantage, which will result from the proposed alternative, is this — that there will be necessary communications between your ten members in Congress and your hundred and seventy representatives here. If it goes through the hands of the latter, they will know how much the citizens can pay, and, by looking at the paper on your table, they will know how much they ought to pay. No man is possessed of sufficient information to know how much we can or ought to pay.

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

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

He tells us that responsibility is secured by direct taxation. Responsibility, instead of being increased, will be lost forever by it. In our state government, our representatives may be severally instructed by their constituents. There are no persons to counteract their operations. They can have no excuse for deviating from our instructions. In the general government, other men have power over the business. When oppressions may take place, our representatives may tell us, — We contended for your interest; but we could not carry our point, because the representatives from Massachusetts, New Hampshire, Connecticut, &c., were against us.

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Thus, sir, you may see there is no real responsibility. He further said that there was such a contrariety of interests as to hinder a consolidation. I will only make one remark. There is a variety of interests. Some of the states owe a great deal on account of paper money; others very little; some of the Northern States have collected and barrelled up paper money. Virginia has sent thither her cash long ago. There is little or none of the Continental paper money retained in this state. Is it not their business to appreciate this money? Yes, and it will be your business to prevent it. But there will be a majority against you, and you will be obliged to pay your share of this money, in its nominal value. It has been said, by several gentlemen, that the freeness of elections would be promoted by throwing the country into large districts. I contend, sir, that it will have a contrary effect. It will destroy that connection that ought to subsist between the electors and the elected. If your elections be by districts, instead of counties, the people will not be acquainted with the candidates. They must, therefore, be directed in the elections by those who know them. So that, instead of a confidential connection between the electors and the elected, they will be absolutely unacquainted with each other. A common man must ask a man of influence how he is to proceed, and for whom he must vote. The elected, therefore, will be careless of the interest of the electors. It will be a common job to extort the suffrages of the common people for the most influential characters. The same men may be repeatedly elected by these means. This, sir, instead of promoting the freedom of elections, leads us to an aristocracy. Consider the mode of elections in England. Behold the progress of an election in an English shire. A man of an enormous fortune will spend thirty or forty thousand pounds to get himself elected. This is frequently the case. Will the honorable gentleman say that a poor man, as enlightened as any man in the island, has an equal chance with a rich man, to be elected? He will stand no chance, though he may have the finest understanding of any man in the shire. It will be so here. Where is the chance that a poor man can come forward with the rich? The honorable gentleman will find that, instead of supporting democratical principles, it goes absolutely to destroy them.

The state governments, says he, will possess greater ad-

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vantages than the general government, and will consequently prevail. His opinion and mine are diametrically opposite. Bring forth the federal allurements, and compare them with the poor, contemptible things that the state legislatures can bring forth. On the part of the state legislatures, there are justices of the peace and militia officers; and even these justices and officers are bound by oath in favor of the Constitution. A constable is the only man who is not obliged to swear paramount allegiance to this beloved Congress. On the other hand, there are rich, fat, federal emoluments. Your rich, snug, fine, fat, federal officers — the number of collectors of taxes and excises — will outnumber any thing from the states. Who can cope with the excisemen and taxmen? There are none in this country who can cope with this class of men alone. But, sir, is this the only danger? Would to Heaven that it were! If we are to ask which will last the longest, the state or the general government, you must take an army and a navy into the account. Lay these things together, and add to the enumeration the superior abilities of those who manage the general government.

Can, then, the state governments look it in the face? You dare not look it in the face now, when it is but in embryo. The influence of this government will be such, that you never can get amendments; for if you propose alterations, you will affront them. Let the honorable gentleman consider all these things, and say, whether the state governments will last as long as the federal government. With respect to excises, I can never endure them. They have been productive of the most intolerable oppressions every where. Make a probable calculation of the expense attending the legislative, executive, and judiciary. You will find that there must be an immense increase of taxes. We are the same mass of people we were before; in the same circumstances; the same pockets are to pay. The expenses are to be increased. What will enable us to bear this augmentation of taxes? The mere form of government will not do it. A plain understanding cannot conceive how the taxes can be diminished, when our expenses are augmented, and the means of paying them not increased.

With respect to our tax laws, we have purchased a little knowledge by sad experience upon the subject. Reiterated experiments have taught us what can alleviate the distresses,

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and suit the convenience, of the people. But we are now to throw away that system by which we have acquired this knowledge, and send ten men to legislate for us.

The honorable gentleman was pleased to say that the representation of the people was the vital principle of this government. I will readily agree that it ought to be so. But I contend that this principle is only nominally, and not substantially, to be found there. We contended with the British about representation. They offered us such a representation as Congress now does. They called it a virtual representation. If you look at that paper, you will find it so there. Is there but a virtual representation in the upper house? The states are represented, *as states*, by two senators each. This is virtual, not actual. They encounter you with Rhode Island and Delaware. This is not an actual representation. What does the term *representation* signify? It means that a certain district — a certain association of men — should be represented in the government, for certain ends. These ends ought not to be impeded or obstructed in any manner. Here, sir, this populous state has not an adequate share of legislative influence. The two petty states of Rhode Island and Delaware, which, together, are infinitely inferior to this state in extent and population, have double her weight, and can counteract her interest. I say that the representation in the Senate, as applicable to states, is not actual. Representation is not, therefore, the vital principle of this government. So far it is wrong.

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

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

The honorable gentleman did our judiciary honor in say-

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ing that they had firmness to counteract the legislature in some cases. Yes, sir, our judges opposed the acts of the legislature. We have this landmark to guide us. They had fortitude to declare that they were the judiciary, and would oppose unconstitutional acts. Are you sure that your federal judiciary will act thus? Is that judiciary as well constructed, and as independent of the other branches, as our state judiciary? Where are your landmarks in this government? I will be bold to say you cannot find any in it. I take it as the highest encomium on this country, that the acts of the legislature, if unconstitutional, are liable to be opposed by the judiciary.

Then the honorable gentleman said that the two judiciaries and legislatures would go in a parallel line, and never interfere; that, as long as each was confined to its proper objects, there would be no danger of interference; that, like two parallel lines, as long as they continued in their parallel direction, they never would meet. With submission to the honorable gentleman's opinion, I assert that there is danger of interference, because no line is drawn between the powers of the two governments, in many instances; and, where there is a line, there is no check to prevent the one from encroaching upon the powers of the other.

I therefore contend that they must interfere, and that this interference must subvert the state government, as being less powerful. Unless your government have checks, it must inevitably terminate in the destruction of your privileges. I will be bold to say that the British government has real checks. I was attacked by gentlemen, as if I had said that I loved the British government better than our own. I never said so. I said that, if I were obliged to relinquish a republican government, I would choose the British monarchy. I never gave the preference to the British or any other government, when compared to that which the honorable gentleman assisted to form. I was constrained to say what I said. When two disagreeable objects present themselves to the mind, we choose that which has the least deformity.

As to the western country, notwithstanding our representation in Congress, and notwithstanding any regulation that may be made by Congress, it may be lost. The seven Northern States are determined to give up the Mississippi.

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

With respect to the concurrent collection of parochial, county, and state taxes, which the honorable gentleman has instanced as a proof of the practicability of the concurrent collection of taxes by the general and state governments, the comparison will not stand examination. As my honorable friend has said, these concurrent collections come from one power. They radiate from the same centre. They are not coëqual or coëxtensive. There is no clashing

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of power between them. Each is limited to its own particular objects, and all subordinate to one supreme, controlling power — the legislature. The county courts have power over the county and parish collections, and can constantly redress any injuries or oppressions committed by the collectors. Will this be the case in the federal courts? I hope they will not have federal courts in every county. If they will, the state courts will be debased and stripped of their cognizance, and utterly abolished. Yet, if there be no power in the country to call them to account, they will more flagrantly trample on your rights. Does the honorable gentleman mean that the thirteen states will have thirteen different tax laws? Is this the expedient which is to be substituted for the unequal and unjust one of uniform taxes? If so, many horrors present themselves to my mind. They may be imaginary, but it appears to my mind to be the most abominable system that could be imagined. It will destroy every principle of responsibility. It will be destructive of that fellow-feeling, and consequent confidence, which ought to subsist between the representatives and the represented. We shall then be taxed by those who bear no part in the taxes themselves, and who, consequently, will be regardless of our interest in imposing them upon us. The efforts of our ten men will avail very little when opposed by the northern majority. If our ten men be disposed to sacrifice our interest, we cannot detect them. Under the color of being outnumbered by the northern representatives, they can always screen themselves. When they go to the general government, they may make a bargain with the northern delegates. They may agree to tax our citizens in any manner which may be proposed by the northern members; in consideration of which, the latter may make them some favorite concessions. The Northern States will never assent to regulations promotive of southern aggrandizement. Notwithstanding what gentlemen say of the probable virtue of our representatives, I dread the depravity of human nature. I wish to guard against it by proper checks, and trust nothing to accident or chance. I will never depend on so slender a protection as the possibility of being represented by virtuous men.

Will not thirteen different objects of taxation in the thirteen different states involve us in an infinite number of

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

Mr. MADISON. Mr. Chairman, pardon me for making a few remarks on what fell from the honorable gentleman last up. I am sorry to follow the example of gentlemen in deviating from the rule of the house. But as they have taken the utmost latitude in their objections, it is necessary that those who favor the government should answer them. But I wish, as soon as possible, to take up the subject regularly. I will therefore take the liberty to answer some observations which have been irregularly made, though they might be more properly answered when we come to discuss those parts of the Constitution to which they respectively refer. I will, however, postpone answering some others till then. If there be that terror in direct taxation, that the states would comply with requisitions to guard against the federal legislature; and if, as gentlemen say, this state will always have it in her power to make her collections speedily and fully, — the people will be compelled to pay the same amount as quickly and punctually as if raised by the general government.

It has been amply proved that the general government can lay taxes as conveniently to the people as the state governments, by imitating the state systems of taxation. If the general government have not the power of collecting

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its own revenues, in the first instance, it will be still dependent on the state governments in some measure; and the exercise of this power, after refusal, will be inevitably productive of injustice and confusion, if partial compliances be made before it is driven to assume it. Thus, sir, without relieving the people in the smallest degree, the alternative proposed will impair the efficacy of the government, and will perpetually endanger the tranquillity of the Union.

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

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siderations of personal delicacy should dissuade us from introducing it here.

The honorable member has introduced the subject of religion. Religion is not guarded; there is no bill of rights declaring that religion should be secure. Is a bill of rights a security for religion? Would the bill of rights, in this state, exempt the people from paying for the support of one particular sect, if such sect were exclusively established by law? If there were a majority of one sect, a bill of rights would be a poor protection for liberty. Happily for the states, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects which pervades America, and which is the best and only security for religious liberty in any society; for where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. Fortunately for this commonwealth, a majority of the people are decidedly against any exclusive establishment. I believe it to be so in the other states. There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation. I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom. It is better that this security should be depended upon from the general legislature, than from one particular state. A particular state might concur in one religious project. But the United States abound in such a variety of sects, that it is a strong security against religious persecution; and it is sufficient to authorize a conclusion, that no one sect will ever be able to outnumber or depress the rest.

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

It is worthy of observation, on this occasion, that the honorable gentleman himself seldom fails to contradict the arguments of gentlemen on that side of the question. For example, he strongly complains that the federal government, from the number of its members, will make an addition to the public expense too formidable to be borne; and yet he, and other gentlemen on the same side, object that the number of representatives is too small, though ten men are more

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than we are entitled to under the existing system! How can these contradictions be reconciled? If we are to adopt any efficient government at all, how can we discover or establish such a system, if it be thus attacked? Will it be possible to form a rational conclusion upon contradictory principles? If arguments of a contradictory nature were to be brought against the wisest and most admirable system to the formation of which human intelligence is competent, it never could stand them.

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

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

I can never admit that seven states are disposed to sur

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

The honorable gentleman, to obviate the force of my observations with respect to concurrent collection of taxes under different authorities, said that there was no interference between the concurrent collection of parochial, county, and state taxes, because they all radiated from the same centre, but that this was not the case with the general government. To make use of the gentleman's own terms, the concurrent collections under the authorities of the general government and state governments all radiate from the people at large. The people is their common superior. The sense of the people at large is to be the predominating spring of their actions. This is a sufficient security against interference.

Our attention was called to our commercial interest, and at the same time the landed interest was said to be in danger. If those ten men, who were to be chosen, be elected by landed men, and have land themselves, can the electors have any thing to apprehend? If the commercial interests be in danger, why are we alarmed about the carrying trade? Why is it said that the carrying states will preponderate, if commerce be in danger? With respect to speculation, I will remark that stock-jobbing has prevailed more or less in all countries, and ever will, in some degree, notwithstanding any exertions to prevent it. If you judge from what has happened under the existing system, any change would render a melioration probable.

FRIDAY, *June* 13, 1788.

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

Mr. HENRY opposed the motion as to taking up the subject clause by clause. He thought it ought to be considered

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at large. He observed that, among a great variety of subjects, the business of the Mississippi had taken up a great deal of time. He wished, before they should take leave of that subject, that the transactions of Congress relative to the navigation of that river should be communicated to the Convention, in order that they might draw their conclusions from the best source. For this purpose, he hoped that those gentlemen who had been then in Congress, and the present members of Congress who were in Convention, would communicate what they knew on the subject. He declared that he did not wish to hurt the feelings of the gentlemen who had been in Congress, or to reflect on any private character; but that, for the information of the Convention, he was desirous of having the most authentic and faithful account of facts.

Mr. NICHOLAS had no objection to Mr. Henry's proposal.

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

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

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

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

Mr. LEE (of Westmoreland) then, in a short speech, related several congressional transactions respecting that river, and strongly asserted that it was the inflexible and determined resolution of Congress never to give it up; that the secretary of foreign affairs, who was authorized to form a

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treaty with Gardoqui, the Spanish ambassador, had positive directions not to assent to give up that navigation, and that it never had been their intention or wish to relinquish it; that, on the contrary, they earnestly wished to adopt the best plan of securing it.

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

The policy of this state respecting this river has always been the same. It has contemplated but one object — the opening it for the use of the inhabitants whose interest depended on it; and in this she has, in my opinion, shown her wisdom and magnanimity. I may, I believe, with propriety say that all the measures that have at any time been taken by Congress for that purpose were adopted at the instance

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of this state. There was a time, it is true, sir, when even this state in some measure abandoned the object, by authorizing this cession to the court of Spain. But let us take all circumstances into view, as they were at that time, and I am persuaded it will by no means show a departure from this liberal and enlightened system of policy, although it may manifest an accommodation to the exigencies which pressed on us at the time. The Southern States were overrun, and in possession of the enemy. The governments of South Carolina and Georgia were prostrate, and opposition there at an end. North Carolina made but a feeble resistance; and Virginia herself was greatly harassed by the enemy in force at that time in the heart of the country, and by impressments for her own and the defence of the Southern States. In addition to this, the finances of the United States were in a deplorable condition, if not totally exhausted; and France, our ally, seemed anxious for peace; and, as the means of bringing the war to a more happy and speedy conclusion, the object of this cession was the hopes of uniting Spain in it, with all her forces. If I recollect aright, too, at this moment the minister of the United States at the court of Madrid, informed Congress of the difficulty he found in prevailing upon that court to acknowledge our independence, or take any measure in our favor; and suggested the jealousy with which it viewed our settlements in the western country, and the probability of better success provided we would cede the navigation of this river, as the consideration. The latter circumstances were made known to the legislature, and they had their weight. All inferior objects must yield to the safety of society itself. A resolution passed to that effect. An act of Congress likewise passed, and the minister of the United States had full authority to relinquish this valuable right to that court, upon the condition above stated. But what was the issue of this proposition? Was any treaty made with Spain that obtained an acknowledgment of our independence, although at war with Great Britain, and such acknowledgment would have cost her nothing? Was a loan of money accomplished? In short, does it appear that even Spain herself thought it an object of any importance? So soon as the war ended, this resolution was rescinded. The power to make such a treaty was revoked. So that this system of policy was departed from, only for a short

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time, for the most important object that can be conceived, and resumed again as soon as it possibly could be.

After the peace, it became the business of Congress to investigate the relation of these states to the different powers of the earth, in a more extensive view than they had hitherto done, and particularly in the commercial line, and to make arrangements for entering into treaties with them on such terms as might be mutually beneficial for each party. As the result of the deliberations of that day, it was resolved, "That commercial treaties be formed, if possible, with said powers, (those of Europe in particular, Spain included,) upon similar principles, and three commissioners, Mr. Adams, Mr. Franklin, and Mr. Jefferson, be appointed for that purpose." So that an arrangement for a treaty of commerce with Spain had already been taken. Whilst these powers were in force, a representative from Spain arrived, authorized to treat with the United States on the interfering claims of the two nations respecting the Mississippi, and the boundaries, and other concerns wherein they were respectively interested. A similar commission was given to the honorable the secretary of foreign affairs, on the part of the United States, with these *ultimata:* "That he enter into no treaty, compact, or convention whatever, with the said representative of Spain, which did not stipulate our right to the navigation of the Mississippi, and the boundaries as established in our treaty with Great Britain." And thus the late negotiation commenced, and under auspices, as I supposed, very favorable to the wishes of the United States; for Spain had become sensible of the propriety of cultivating the friendship of the states. Knowing our claim to the navigation of this river, she had sent a minister hither principally to treat on that point; and the time would not be remote when, under the increasing population of that country, the inhabitants would be able to open it without our assistance or her consent. These circumstances being considered, was it not presumable she intended to make a merit of her concession to our wishes, and to agree to an accommodation upon that subject, that would not only be satisfactory, but highly pleasing to the United States?

But what was the issue of this negotiation? How was it terminated? Has it forwarded the particular object in view, or otherwise promoted the interest and the harmony of

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the states, or any of them? Eight or ten months elapsed without any communications of its progress to Congress. At length a letter was received from the secretary, stating that difficulties had arisen in his negotiation with the representative of Spain, which, in his opinion, should be so managed, as that even their existence should remain a secret for the present; and proposing that a committee be appointed, with full power to direct and instruct him in every case relative to the proposed treaty. As the only *ultimata* in his instructions respected the Mississippi and the boundaries, it readily occurred that these occasioned the difficulties alluded to, and were those he wished to remove. And for many reasons this appeared, at least to me, an extraordinary proposition. By the Articles of Confederation, nine states are necessary, to enter into treaties. The instruction is the foundation of the treaty; for, if it is formed agreeably thereto, good faith requires that it be ratified. The practice of Congress hath also been always, I believe, in conformity to this idea. The instructions under which our commercial treaties have been made were carried by nine states. Those under which the secretary now acted were passed by nine states. The proposition then would be, that the powers which, under the Constitution, nine states only were competent to, should be transferred to a committee, and the object, thereby to disengage himself from the *ultimata* already mentioned in his existing instructions. In this light the subject was taken up, and on these principles discussed. The secretary, Mr. Jay, being at length called before Congress to explain the difficulties mentioned in his letter, presented to their view the project of a treaty of commerce, containing, as he supposed, advantageous stipulations in our favor, in that line; in consideration for which, we were to contract to forbear the use of the navigation of the River Mississippi for the term of twenty-five or thirty years; and he earnestly advised our adopting it.

The subject now took a decided form: there was no further ambiguity in it; and we were surprised, for reasons that have been already given, that he had taken up the subject of commerce at all. We were greatly surprised that it should form the principal object of the project, and that a partial or temporary sacrifice of that interest, for the advancement of which the negotiation was set on foot should

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be the consideration proposed to be given for it. But the honorable secretary urged that it was necessary to stand well with Spain; that the commercial project was a beneficial one, and should not be neglected; that a stipulation to forbear the use contained an acknowledgment, on her part, of the right in the United States; that we were in no condition to take the river, and therefore gave nothing for it; with other reasons, which, perhaps, I have forgotten; for the subject in detail has nearly escaped my memory. We differed with the honorable secretary almost in every respect. We admitted, indeed, the propriety of standing well with Spain, but supposed we might accomplish that end at least on equal terms. We considered the stipulation to forbear the use as a species of barter that should never be countenanced in the councils of the American states, since it might tend to the destruction of society itself; for a forbearance of the use of one river might lead to more extensive consequences — to the Chesapeake, the Potomac, or any other of the rivers that emptied into it. In short, that the councils of the confederacy should be conducted with more magnanimity and candor — they should contemplate the benefit of all parts upon common principles, and not the sacrifice of one part for that of another. There appeared to us a material difference between stipulating by treaty to forbear the use, and not being able to open the river: the former would be considered by the inhabitants of the western country as an act of hostility; the latter might be justified by our inability. And with respect to the commercial part of the project, we really thought it an ill-advised one, on its own merits solely.

Thus was this project brought before Congress, and, so far as I recollect, in this form, and upon these principles. It was the subject of tedious and lengthy discussion in that honorable body. Every distinct measure that was taken I do not remember, nor do I suppose it of consequence. I have shown the outlines of the transaction, which is, if I apprehend rightly, all that the committee wish to possess. The communications of the secretary were referred to a committee of the whole house. The delegates of the seven easternmost states voted that the *ultimatum* in the secretary's instructions be repealed; which was reported to the house, and entered on the journal, by the secretary of Congress, that the question was carried. Upon this entry, a constitu-

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tional question arose to this effect: "Nine states being necessary, by the federal Constitution, to give an instruction, and seven having repealed a part of an instruction so given, for the formation of a treaty with a foreign power, so as to alter its import, and authorize, under the remaining part thereof, the formation of a treaty, on principles altogether different from what the said instruction originally contemplated, — can such remaining part be considered as in force, and constitutionally obligatory?" We pressed on Congress for a decision on this point often, but without effect.

Notwithstanding this, I understood it was the intention of the secretary to proceed, and conclude a treaty, in conformity to his project, with the minister of Spain. In this situation I left Congress. What I have since heard belongs not to me to discover. Other gentlemen have more complete information of this business, in the course it has taken, than I can possibly have been able to obtain; for having done my duty whilst there, I left it for others who succeeded me to perform theirs, and I have made but little further inquiry respecting it. The animated pursuit that was made of this object, required, and, I believe, received, as firm an opposition. The Southern States were on their guard, and warmly opposed it. For my part, I thought it my duty to use every effort in Congress for the interest of the Southern States. But so far as depended on me, with my official character it ceased. With many of those gentlemen, to whom I always considered it as my particular misfortune to be opposed, I am now in habits of correspondence and friendship, and I am concerned for the necessity which has given birth to this relation.

Whether the delegates of those states spoke the language of their constituents — whether it may be considered as the permanent interest of such states to depress the growth and increasing population of the western country — are points which I cannot pretend to determine. I must observe, however, that I always supposed it would, for a variety of reasons, prove injurious to every part of the confederacy. These are well understood, and need not be dilated on here. If, however, such should be the interest of seven states, let gentlemen contemplate the consequences in the operation of the government, as it applies to this subject. I have always been of opinion, sir, that the American states, as to all national objects, had, in every respect, a common interest. Few per-

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sons would be willing to bind them together by a stronger or more indissoluble bond, or give the national government more powers, than myself. I only wish to prevent it from doing harm, either to states or individuals; and the rights and interests of both, in a variety of instances in which they are now left unprotected, might, in my opinion, be better guarded. If I have mistaken any facts, honorable gentlemen will correct me. If I have omitted any, as it has not been intentional, so I shall be happy with their assistance to supply the defect.

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

Mr. GRAYSON. Mr. Chairman, the honorable gentleman was mistaken when he supposed that I said seven states had absolutely voted to surrender the navigation of the Mississippi. I only spoke of the general disposition of the states, which I alleged to be actuated by interest; that consequently the carrying states were necessarily inclined against the extension of the interest and influence of the productive states; and that, therefore, they would not favor any measure to extend the settlements to the westward.

I wished not to enter into this discussion, for the reasons mentioned by my honorable friend. Secrecy was required on this subject. I told Congress that imposing secrecy, on such a great occasion, was unwarrantable. However, as it was not given up, I conceived myself under some restraint.

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But since it has come before the committee, and they desire to develop the subject, I shall stand excused for mentioning what I know of it. My honorable friend gave a very just account of it, when he said that the Southern States were on their guard, and opposed every measure tending to relinquish or waive that valuable right. They would not agree to negotiate, but on condition that no proposition whatever should be made to surrender that great right. There was a dispute between this country and Spain, who claimed one half of Georgia, and one half of Kentucky, or, if not that proportion, a very considerable part, as well as the absolute and exclusive navigation of the Mississippi. The Southern States thought that the navigation of the Mississippi should not be trusted to any hands but those in which the Confederation had placed the right of making treaties. That system required the consent of nine states for that purpose. The secretary for foreign affairs was empowered to adjust the interfering claims of Spain and the United States with the Spanish minister; but, as my honorable friend said, with an express prohibition of entering into any negotiation that would lead to the surrender of that river. Affairs continued in this state for some time. At length a proposition was made to Congress, not directly, but by a side wind. The first proposal was, to take off the fetters of the secretary. When the whole came out, it was found to be a proposal to cede the Mississippi to Spain for twenty-five or thirty years, (for it was in the disjunctive,) in consideration of certain commercial stipulations. In support of this proposal, it was urged that the right was in him who surrendered; and that their acceptance of a temporary relinquishment was an acknowledgment of our right, (which would revert to us at the expiration of that period,) that we could not take by war: that the thing was useless to us, and that it would be wise and politic to give it up, as we were to receive a beneficial compensation for that temporary cession. Congress, after a great deal of animosity, came to a resolution which, in my opinion, violated the Confederation. It was resolved, by seven states, that the prohibition in the secretary's instruction should be repealed; whereby the unrepealed part of his instructions authorized him to make a treaty, yielding that inestimable navigation, although, by the Confederation, nine states were necessary to concur in the formation of a treaty!

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How, then, could seven states constitutionally adopt any measure, to which, by the Constitution, nine states alone were competent? It was entered on the journals, and transmitted to the secretary of foreign affairs, for his direction in his negotiation with the Spanish minister.

If I recollect rightly, by the law of nations, if a negotiator makes a treaty, in consequence of a power received from a sovereign authority, non-compliance with his stipulations is a just cause of war. The opposition suggested (whether wrong or not let this house determine) that this was the case; that the proceedings were repugnant to the principles and express letter of the Constitution; and that, if the compact which the secretary might form with the Spanish minister should not be complied with, it would be giving Spain a just cause of quarrel; so that we should be reduced to the dilemma of either violating the Constitution by a compliance, or involving us in a war by a non-compliance. The opposition remonstrated against these transactions, (and their remonstrance was entered on the journal,) and took every step for securing this great national right. In the course of the debates in Congress on this subject, which were warm and animated, it was urged that Congress, by the law of nations, had no right, even with the consent of nine states, to dismember the empire, or relinquish any part of the territory, appertaining to the aggregate society, to any foreign power. Territorial dismemberment, or the relinquishment of any other privilege, is the highest act of a sovereign power. The right of territory has ever been considered as most sacred, and ought to be guarded in the most particular and cautious manner. Whether that navigation be secure on this principle, by the new Constitution, I will not pretend to determine. I will, however, say one thing. It is not well guarded under the old system. A majority of seven states are disposed to yield it. I speak not of any particular characters. I have the charity to suppose that all mankind act on the best motives. Suffice it for me to tell direct and plain facts, and leave the conclusion with this honorable house.

It has been urged, by my honorable friend on the other side, (Mr. Madison,) that the Eastern States were averse to surrender it during the war, and that the Southern States proposed it themselves, and wished to yield it. My honor-

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able friend last up has well accounted for this disgraceful offer, and I will account for the refusal of the Eastern States to surrender it.

Mr. Chairman, it is no new thing to you to discover these reasons. It is well known that the Newfoundland fisheries and the Mississippi are balances for one another; that the possession of one tends to the preservation of the other. This accounts for the eastern policy. They thought that, if the Mississippi was given up, the Southern States would give up the right of the fishery, on which their very existence depends. It is not extraordinary, therefore, while these great rights of the fishery depend on such a variety of circumstances, — the issue of war, the success of negotiations, and numerous other causes, — that they should wish to preserve this great counterbalance. What has been their conduct since the peace? When relieved from the apprehensions of losing that great advantage, they are solicitous of securing a superiority of influence in the national councils. They look at the true interest of nations. Their language has been, "Let us prevent any new states from rising in the western world, or they will outvote us — we shall lose our importance, and become as nothing in the scale of nations. If we do not prevent it, our countrymen will remove to those places, instead of going to sea, and we shall receive no particular tribute or advantage from them."

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

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

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

Mr. MADISON. Mr. Chairman, it is extremely disagreeable to me to enter into this discussion, as it is foreign to the object of our deliberations here, and may, in the opinion of some, tend to sully the reputation of our public councils. As far as my memory will enable me, I will develop the subject. We shall not differ from one another with respect to facts: perhaps we may differ with respect to princi-

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ples. I will take the liberty to observe that I was led, before, to make some observations which had no relation to the subject under consideration, as relative to the western country, to obviate suggestions of gentlemen which seemed to me to be groundless. I stated that, there was a period when the Southern States were advocates for the alienation, or suspension, of the right to the Mississippi, (I will not say which,) and the Eastern States were against both. I mention this to show that there was no disposition in that part to surrender that right, or dispose of that country. I do suppose that the fishery had its influence on those states. No doubt it was the case.

For that and other reasons, they still continue against the alienation; for it might lessen the security of retaining the fishery. From the best information, it never was the sense of the people at large, or the prevailing character of the Eastern States, to approve of the measure. If interest, sir, should continue to operate on them, I humbly conceive that they will derive more advantage from holding the Mississippi than even the Southern States; for, if the carrying business be their natural province, how can it be so much extended and advanced as by giving encouragement to agriculture in the western country, and having the emolument of carrying their produce to market? The carrying trade must depend on agriculture, for its support, in a great measure. In what place is agriculture so capable of improvement and great extension as in the western country? But whatever considerations may prevail in that quarter, or any other, respecting their interest, I think we may fairly suppose that the consideration which the honorable member mentioned, and which has been repeated, — I mean the emigrations which are going on to the westward, — must produce the same effect as to them which it may produce with respect to us. Emigrations are now going on from that quarter, as well as from this state.

I readily confess that neither the old Confederation nor the new Constitution involves a right to give up the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which will make it necessary to make a sacrifice. But there is a material difference between emergencies of safety in time of war, and those

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

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

With respect to the secretary of foreign affairs, I am intimately connected with him. I shall say nothing of his abilities, and attachment to his country. His character is established in both respects. He has given a train of reasoning which governed him in his project. If he was mistaken, his integrity and probity more than compensate for the error. I am led to think there is no settled disposition in seven states to give up that object, because New Jersey, on a further consideration of the subject, actually gave instructions to her delegates to oppose it. And what was the ground of this? I do not know the extent and particular reasons of her instructions. But I recollect that a material consideration

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was, that the cession of that river would diminish the value of the western country, (which was a common fund for the United States,) and would, consequently, tend to impoverish their public treasury. These, sir, were rational grounds.

Give me leave, sir, — as I am upon this subject, and as the honorable gentleman has raised a question whether it be not more secure under the old than the new Constitution, — to differ from him. I shall enter into the reasoning which, in my mind, renders it more secure under the new system. Two thirds of the senators present, (which will be nine states, if all attend to their duty,) and the President, must concur in every treaty which can be made. Here are two distinct and independent branches, which must agree to every treaty. Under the existing system, two thirds of the states must concur to form a treaty. But it is but one body. Gentlemen may reason and conclude differently on this subject. I own that, as far as I have any rights, which are but trivial, I would rather trust them to the new than the old government. Besides, let me observe that the House of Representatives will have a material influence on the government, and will be additional security in this respect. But there is one thing which he mentioned which merits attention. If commercial policy be a source of great danger, it will have less influence in the new system than in the old; for, in the House of Representatives, it will have little or no influence. They are drawn from the landed interest, taken from the states at large, and many of them from the western country; whereas the present members of Congress have been taken from the Atlantic side of the continent. When we calculate the dangers that may arise in any case, we judge from the rules of proportion and chances of numbers. The people at large choose those who elect the President. The weight of population will be to the southward, if we include the western country. There will then be a majority of the people in favor of this right. As the President must be influenced by the sense and interest of his electors, as far as it depends on him, (and his agency in making treaties is equal to that of the Senate,) he will oppose the cession of that navigation. As far as the influence of the representatives goes, it will also operate in favor of this right. The power of treaties is not lodged in the senators of particular states. Every state has an equal weight. If

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ten senators can make a treaty, ten senators can prevent one from being made. It is from a supposition that all the southern delegates will be absent, that ten senators, or two thirds of a majority, can give up this river. The possibility of absence operates equally as much against the Northern States. If one fifth of the members present think the measure erroneous, the votes of the states are to be taken upon it, and entered on the journals. Every gentleman here ought to recollect that this is some security, as the people will thereby know those who advocate iniquitous measures. If we consider the number of changes in the members of the government, we shall find it another security. But, after all, sir, what will this policy signify, which tends to surrender the navigation of the Mississippi? Resolutions of Congress to retain it may be repeated, and re-echoed from every part of the United States. It is not resolutions of this sort which the people of this country wish for. They want an actual possession of the right, and protection in its enjoyment. Similar resolutions have been taken, under the existing system, on many occasions. But they have been heretofore, and will be hereafter, in my opinion, nugatory and fruitless, unless a change takes place which will give energy to the acts of the government.

I will take the liberty to touch once more on the several considerations which produced the question, because perhaps the committee may not yet thoroughly comprehend it. In justice to those gentlemen who concluded in favor of the temporary cession, I mention their reasons, although I think the measure wrong. The reasons for so doing under the old system will be done away by the new system. We could not, without national dishonor, assert our right to the Mississippi, and suffer any other nation to deprive us of it. This consideration, with others before mentioned, influenced them. I admit it was wrong. But it is sufficient to prove that they acted on principles of integrity. Will they not be bound by honor and conscience, when we are able to enjoy and retain our right, not to give it up, or suffer it to be interrupted? A weak system produced this project. A strong system will remove the inducement. For may we not suppose it will be reversed by a change of system? I was called up to say what was its present situation. There are some circumstances within my knowledge which I am not at liberty

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to communicate to this house. I will not go farther than to answer the objections of gentlemen. I wish to conceal no circumstance which I can relate consistently with my duty. As to matters of fact, I have advanced nothing which I presume will be contradicted. On matters of opinion we may differ. Were I at liberty, I could develop some circumstances which would convince this house that this project will never be revived in Congress, and that, therefore, no danger is to be apprehended.

Mr. GRAYSON. Mr. Chairman, the honorable gentleman last up concluded by leaving impressions that there were some circumstances which, were he at liberty to communicate, would induce this house to believe that the matter would never be revived. Were we to exclude from facts and opinions, or were we to appeal to the resolutions of Congress, a very different conclusion would result. When I was in Congress last, there was a resolution to apologize to his Catholic Majesty for not making the treaty, and intimating that, when the situation of things was altered, it might be done. Had it not been for one particular circumstance, it would have been concluded on the terms my honorable friend mentioned. When I was last in Congress, the project was not given over. Its friends thought it would be renewed.

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

But, says the honorable gentleman, there is a great difference between actually giving it up altogether, and a temporary cession. If the right was given up for twenty-five years, would this country be able to avail herself of her right, and resume it at the expiration of that period? If ever the house of Bourbon should be at war with all Europe, then would be the golden opportunity of regaining it. Without this, we never could wrest it from the house of Bourbon, the branches of which always support each other.

If things continue as they are now, emigrations will continue to that country. The hope that this great national right will be retained, will induce them to go thither. But take away that hope, by giving up the Mississippi for twenty-five years, and the emigrations will cease. As interest

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actuates mankind, will they go thither when they know they cannot enjoy the privilege of navigating that river, or find a ready market for their produce? There is a majority of states which look forward with anxiety to the benefits of the commercial project with Spain. In the course of the Spanish negotiation, our delegation thought of a project which would be accommodated to their particular interest. It was proposed, by way of compromise, as being suitable to the interest of all the states, that the Spanish crown should make New Orleans a general depository, and that the growth of the American states should be sent down for the use of the Spanish troops; Spain being obliged to foreign nations for provisions. This was throwing out a lure to the Eastern States to carry the produce of that whole country. But this temptation did not succeed. It was thought no object in their view, when greater objects presented themselves.

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

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

But, says he, Massachusetts is willing to protect emigration. When the act of Congress passed respecting the settlement of the western country, and establishing a state there, it passed in a lucky moment. I was told that that state was extremely uneasy about it; and that, in order to retain her

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inhabitants, lands in the province of Maine were lowered to the price of one dollar per acre. As to the tract of country conveyed by New York to Massachusetts, neither of them had a right to it. Perhaps that great line of policy, of keeping the population on that side of the continent, in contradistinction to the emigration to the westward of us, actuated Massachusetts in that transaction. There is no communication between that country and the Mississippi. The two great northern communications are by the North River, and by the River St. Lawrence, to the Mississippi. But there is no communication between that country, where the people of Massachusetts emigrate, and the Mississippi; nor do I believe that there ever will be one traveller from it thither.

I have a great regard for the secretary of foreign affairs. In my opinion, all America is under great obligations to him. But I differed in opinion with him.

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

Mr. HENRY. Mr. Chairman: I hope, sir, as the honorable gentleman on my left set the example of debating the merits, that whatever may result as consequences of that example, it may not be attributed to me. I hope that I shall be indulged in offering a few words in addition to what has been said. Gentlemen may do what they will. Their reflections will have no influence on me. It is said that we are scuffling for Kentucky votes, and attending to local circumstances. But if you consider the interests of this country, you will find that the interests of Virginia and Kentucky are most in

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timately and vitally connected. When I see the great rights of the community in real danger, the ideal dangers which gentlemen speak of dissipate. A union with our western brethren is highly desirable, almost on any terms; a union with them, alone, can lessen or annihilate the dangers arising from that species of population of which we have been reminded in the catalogue of dangers which were dwelt upon. They are at present but few in number, but may be very numerous hereafter. If that fatal policy shall take place, you throw them into the arms of Spain. If Congress should, for a base purpose, give away this dearest right of the people, your western brethren will be ruined. We ought to secure to them that navigation which is necessary to their very existence. If we do not, they will look upon us as betrayers of their interest. Shall we appear to care less for their interest than for that of distant people? When gentlemen tell us that the change of system will render our western brethren more secure, and that this system will not betray them, they ought to prove it. When a matter which respects the great national interests of America is concerned, we expect the most decided proofs. Have they given any? Unless you keep open the Mississippi, you never can increase in number. Although your population should go on to an infinite degree, you will be in the minority in Congress; and although you should have a right to be the majority, yet so unhappily is this system of politics constituted, that you will ever be a contemptible minority. To preserve the balance of American power, it is essentially necessary that the right of the Mississippi should be secured.

But, said the honorable gentleman, the Eastern States will wish to secure their fishery, and will, therefore, favor this right. How does he draw the inference? Is it possible that they can act on that principle? The principle which led the Southern States to admit of the cession, was to avoid the most dreadful perils of war. But their difficulties are now ended by peace. Is there any thing like this that can influence the minds of the people of the north? Since the peace, those states have discovered a determined resolution to give it away. There was no similar danger to compel them to yield it. No, sir, they wished to relinquish it. Without any kind of necessity, they acted in conformity to their natural disposition, with respect to emigrations going

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on in that quarter. This, though improbable, may be so. But to say that, because some settlements are going on in New York, Massachusetts will form a connection with the Mississippi, is, to my mind, most wonderful indeed. The great balance will be in the southern parts of America. There is the most extensive and fertile territory. There is the happiest geographical position, situated contiguously to that valuable and inestimable river. But the settlement of that country will not be warranted by the new Constitution, if it will not be forbidden by it.

No constitution under heaven, founded on principles of justice, can warrant the relinquishment of the most sacred rights of society, to promote the interest of one part of it. Do you not see the danger into which you are going, to throw away one of your dearest and most valuable rights? The people of that country now receive great and valuable emoluments from that right being protected by the existing government. But they must now abandon them. For is there any actual security? Show me any clause in that paper which secures that great right. What was the calculation which told you that it would be safer under the new than under the old government? In my mind, it was erroneous. The honorable gentleman told you that there were two bodies, or branches, which must concur to make a treaty. Sir, the President, as distinguished from the Senate, is nothing. They will combine, and be as one. My honorable friend said that ten men, the senators of five states, could give it up. The present system requires the consent of nine states. Consequently, its security will be much diminished. The people of Kentucky, though weak now, will not let the President and Senate take away this right. Look right, and see this abominable policy — consider seriously its fatal and pernicious tendency! Have we not that right guarantied to us by the most respectable power in Europe? France has guarantied to us our sovereignty and all its appendages. What are its appendages? Are not the rivers and waters, that wash the shores of the country, appendages inseparable from our right of sovereignty? France has guarantied this right to us in the most full and extensive manner. What would have been the consequences had this project with Spain been completed and agreed to? France would have told you, "You have

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given it up yourselves; you have put it on a different footing; and if your bad policy has done this, it is your own folly. You have drawn it on your own heads; and, as you have bartered away this valuable right, neither policy nor justice will call on me to guaranty what you gave up yourselves." This language would satisfy the most sanguine American.

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

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

The honorable gentleman has said that the House of Representatives would give some curb to this business of treaties respecting the Mississippi. This is to me incomprehensible. He will excuse me if I tell him he is exercising his imagination and ingenuity. Will the honorable gentleman say that the House of Representatives will break through their bal-

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ances and checks, and break into the business of treaties? He is obliged to support this opinion of his, by supposing that the checks and balances of this Constitution are to be an impenetrable wall for some purposes, and a mere cobweb for some other purposes. What kind of Constitution, then, can this be? I leave gentlemen to draw the inference. I may have misunderstood the gentleman, but my notes tell me that he said the House of Representatives might interfere, and prevent the Mississippi from being given away. They have no power to do this by the Constitution. There will be a majority against it there also. Can you find on the journals the names of those who sacrifice your interest? Will they act so imprudently as to discover their own nefarious project? At present you may appeal to the voice of the people, and send men to Congress positively instructed to obey your instructions. You can recall them if their system of policy be ruinous. But can you in this government recall your senators? Or can you instruct them? You cannot recall them. You may instruct them, and offer your opinions; but if they think them improper, they may disregard them. If they give away or sacrifice your most valuable rights, can you impeach or punish them? If you should see the Spanish ambassador bribing one of your senators with gold, can you punish him? Yes, you can impeach him before the Senate. A majority of the Senate may be sharers in the bribe. Will they pronounce him guilty who is in the same predicament with themselves? Where, then, is the security? I ask not this out of triumph, but anxiously to know if there be any real security.

The gentleman here observed, what I would not give a single pin for. The doctrine of chances, it seems, will operate in our favor. This ideal, figurative doctrine will satisfy no rational people. I have said enough to answer the gentleman as to retaining the navigation.

Give me leave to tell you that, when the great branch of the house of Bourbon has guarantied to us this right, I wish not to lean on American strength, which may be employed to sacrifice it. This present despised system alone has reserved it. It rests on strong grounds—on the arms of France. The honorable member then told us that he thought the project would not be revived. Here, again, the doctrine of chances is introduced. I will admit that the honorable gen-

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tleman can calculate as to future events. But it is too much for him to say that it will not be taken up again. The same disposition may again revive that nefarious project. I can inform him of this — that the American ambassador advises *to let it rest for the present*, which insinuates that it will be resumed at a more favorable opportunity. If this be the language or spirit which causes its suspension, this nefarious, abominable project will be again introduced the first favorable opportunity. We cannot fortify the Atlantic Ocean. The utmost we can do, is to become formidable to the westward. This will be prevented, if this abominable project be adopted. Mr. Henry then added, that, in treating the subject at large, he followed the example of other gentlemen, and that he trusted he should be permitted to consider it generally again.

Mr. MADISON arose, and observed, that the particular ground, on which the abandonment of that project was founded, was, that it was repugnant to the wishes of a great part of America. This reason, says he, becomes stronger and stronger every day, and the sense of America will be more and more known, and more and more understood. The project, therefore, will, in all probability, never be revived. [He added some other observations, which could not be heard.]

Mr. NICHOLAS. Mr. Chairman, the arguments used to-day, on this occasion, astonish me exceedingly. The most valuable right of a part of the community has been invaded. By whom? By Congress, under the existing system — the worthy member's favorite Confederation. Is this an argument to continue that Confederation? Does it not prove that that Confederation is not sufficient for the purposes for which it was instituted? It was doubted what proportion had a right, on that occasion, to repeal the prohibitory part of the secretary's instructions. The Confederation, which makes it a doubt whether they had a right to sacrifice this right, — whether seven states, and not nine, had a right to make the temporary cession, — is the system which merits censure. Yet, by an ingenious and subtile deviation, this instance is brought against this Constitution. We have been alarmed about the loss of the Mississippi, in and out of doors. What does it all amount to? It amounts to an attempt, under the present Confederation, to yield it

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up. Why have we been told of the great importance of this valuable right? Every man knows it. No man has a greater regard for it than I have. But what is the question which the honorable gentleman ought to ask himself? *Is this right better secured under the present Confederation than the new government?* This is the sole question. I beg leave to draw the attention of the committee to this subject. It is objected, by my friend to my left, that two thirds of the Senate present may advise the President to give up this right by a treaty, by which five states may relinquish it. It is provided, in the first article, that a majority of each house shall constitute a quorum to do business; and then, in the second article, that the President, by and with the advice and consent of the Senate, shall have power to make treaties. What part of the Senate? It adds, "Provided two thirds of the senators concur." What is the inference? That there must be a quorum, and *two thirds of the whole* must agree. I shall be told, perhaps, that this construction is not natural, not the positive construction of the clause. If the right construction be, that two thirds of a quorum, or ten senators, may, with the President, make a treaty, — to justify the conclusion, that the Mississippi may be given away by five states, two most improbable things must concur: first, that, on the important occasion of treaties, ten senators will neglect to attend; and in the next place, that the senators whose states are most interested in being fully represented, will be those who will fail to attend. I mean those from the Southern States. How natural this supposition is, I refer to the candor of the committee. But we are told that we have every thing to fear from the Northern States, because they will prevent an accession of states to the south. The policy of states will sometimes change. This is the case with those states, if, indeed, they were enemies to the right; and therefore, as I am informed by very good authority, Congress has admitted Kentucky, as a state, into the Union. Then the law of nations will secure it to them, as the deprivation of territorial rights is obviously repugnant to that law.

But we are told that we may not trust them, because self-interest will govern them. To that interest I will appeal. You have been told that there was a difference between the states — that they were naturally divided into

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carrying and non-carrying states. It is not reasonable to presume that the advancement of population and agriculture, in the western country, will mostly operate in favor of those states, who, from their situation, are best calculated to carry the produce of America to foreign markets. Besides, as members of the Union, they will be materially affected by the sale of the back lands, which will be greatly diminished in case of the relinquishment of that right. The same reason which induced them to erect states there, will also actuate them on every future occasion.

But Congress has violated the Confederation. Shall we continue, then, under a government which warrants, or cannot prevent violations? Shall we hesitate to embrace a government which will check them? But, says the honorable gentleman over the way, (Mr. Grayson,) the Eastern States were interested, during the war, in retaining the Mississippi. But now they have nothing to fear. Will war not return? A great part of his argument turns upon that supposition: — *We shall always have peace, and need make no provision against wars.* Is not this deceiving ourselves? Is it not fallacious? Did there ever exist a nation which, at some period or other, was not exposed to war? As there is no security against future wars, the New England States will be as much interested in the possession of the Mississippi hereafter, as they were during the war. But, says he, the Confederation affords greater security to the western country than the new government. Consider it maturely, and you will find the contrary to be a fact. The security arising from the Confederation is said to be this, that nine states must concur in the formation of a treaty. If, then, hereafter thirty states should come into the Union, yet nine states will still be able to make a treaty. Where, then, is your boasted security, if nine states can make a treaty, although ever so many states should come into the Union? On the other hand, how is this guarded under the new Constitution? No *certain limited number of states* is required to form a treaty. As the number of states will be increasing in the Union, the security will be increased. Every new state will bring an accession of security, because two thirds of the senators must concur. Let the number of states increase ever so much, two thirds of the senators must concur. According to the present system, nine states may make a treaty. It will

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

But, says he, the concurrence of the President to the formation of treaties will be no security. Why so? Will he not injure himself, if he injures the states, by concurring in an injudicious treaty? How is he elected? Where will the majority of the people be? He told you that the great weight of population will be in the southern part of the United States. Their numbers will weigh in choosing the President, as he is elected by electors chosen by the people in proportion to their numbers. If the Southern States be interested in having the Mississippi, and have weight in choosing the President, will he not be a great check in favor of this right? Another thing is treated with great contempt. The House of Representatives, it seems, can have no influence in making treaties. What is the House of Representatives? Where, says he, are your checks and balances, your rope-dancers, &c.? How is this business done in his favorite government? The king of Great Britain can make what treaties he pleases. But, sir, do not the House of Commons influence them? Will he make a treaty manifestly repugnant to their interest? Will they not tell him he is mistaken in that respect, as in many others? Will they not bring the minister who advises a bad treaty to punishment? This gives them such influence that they can dictate in what manner they shall be made. But the worthy member says that this strong government is such a one as Kentucky ought to dread. Is this just, Mr. Chairman? Is it just by general

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assertions, without arguments or proofs, to cast aspersions on it?

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

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

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

I think that Kentucky has nothing to expect from any one state alone in America. She can expect support and succor alone from a strong, efficient government, which can command the resources of the Union when necessary. She can receive no support from the old Confederation. Consider the present state of that country. Declared independent of Virginia, to whom is she to look up for succor? No sister

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state can help her. She may call on tne present general government; but, whatever may be the wish of Congress, they can give them no relief. That country contains all my wishes and prospects. There is my property, and there I intend to reside. I should be averse to the establishment of any system which would be injurious to it. I flatter myself that this government will secure their happiness and liberty.

Gov. RANDOLPH. Since I have seen so many attempts made, and so many wrong inducements offered, to influence the delegation from Kentucky, I must, from a regard to justice and truth, give my opinion on the subject. If I have no interest in that country, I hope they will consider what I have to say as proceeding from an impartial mind. — That the people of Kentucky have an unequivocal right to the navigation of the Mississippi, by the law of nature and nations, is clear and undoubted; though, to my own knowledge, a question has arisen, whether the former connection of America with Great Britain has not taken it away from them. There was a dispute respecting the right of Great Britain to that river, and the United States have only the same right which the original possessor had, from whom it was transferred. I am willing to declare that the right is complete; but where is the danger of losing it by the operation of the new government? The honorable gentleman tells us that France has guarantied to us the possession of that river. *We* need not trouble ourselves about it. France, he supposes, will do every thing for us. Does this pretended security enable us to make use of it? Is there any reasonable motive to induce the government to give it up? If it be not given up, if the guaranty of France be any security now, it will be so then. I wish an honorable gentleman over the way had known certain facts. If he had, they must have operated on his mind to refrain from making such observations. [Here his excellency read the treaty of peace with Great Britain, defining the boundaries of the United States.]

He then declared, that, from the most liberal interpretation, it would never give the inhabitants a right to pass through the middle of New Orleans. I appeal to what the French ambassador said, in 1781, in Congress — that America had no right to the Mississippi. If the opinion of the am-

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bassador of his Most Christian Majesty, and the treaty, have any influence, why are we told such things? There is not a greater or less degree of power, given by this Constitution, than is necessary to be given; but whether the power of treaties be improper to be given, or not, to the general government, I only now ask whether there be any real danger of losing this right. How many senators are there? Twenty-six, supposing the United States remain as they are. We are told that there never were more than seven states willing to give it up; so that there were six states against it. There can be little danger, then, of the loss of that navigation. Pennsylvania is interested to maintain the Mississippi. Her interest will stimulate her to do it. She has settlements near Fort Pitt, on the Ohio, which must be affected greatly by that cession. If his own arguments be credited, New Jersey is against it. There is no danger of her voting the alienation of that right, as she instructed her delegates to oppose it. The Southern States are naturally opposed to it. There will, therefore, be a majority in favor of the Mississippi — a majority that does not depend on the doctrine of chances. There will be fourteen senators against twelve, admitting the states to remain as they are. It will, moreover, be contrary to the law of nations to relinquish territorial rights. To make a treaty to alienate any part of the United States, will amount to a declaration of war against the inhabitants of the alienated part, and a general absolution from allegiance. They will never abandon this great right. Are not the states interested in the back lands, as has been repeatedly observed? Will not the connection between the emigrants and those they leave behind them, serve to strengthen opposition to it? The gentleman wishes us to show him a clause which shall preclude Congress from giving away this right. It is first incumbent upon him to show where the right is given up. There is a prohibition naturally resulting from the nature of things, it being contradictory and repugnant to reason, and the law of nature and nations, to yield the most valuable right of a community, for the exclusive benefit of one particular part of it.

But there is an expression which clearly precludes the general government from ceding the navigation of this river. In the 2d clause of the 3d section of the 4th article, Congress is empowered "to dispose of, and make all needful

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rules and regulations respecting the territory or other property belonging to the United States." But it goes on, and provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or any particular state." Is this a claim of the particular state of Virginia? If it be, there is no authority in the Constitution to prejudice it. If it be not, then we need not be told of it. This is a sufficient limitation and restraint. But it has been said that there is no restriction with respect to making treaties. The various contingencies which may form the object of treaties, are, in the nature of things, incapable of definition. The government ought to have power to provide for every contingency. The territorial rights of the states are sufficiently guarded by the provisions just recited. If you say that, notwithstanding the most express restriction, they may sacrifice the rights of the states, then you establish another doctrine — that the creature can destroy the creator, which is the most absurd and ridiculous of all doctrines.

The honorable gentleman has warned us from taking rash measures that may endanger the rights of that country. Sir, if this navigation be given up, the country adjacent will also be given up to Spain; for the possession of the one must be inseparable from that of the other. Will not this be a sufficient check on the general government? This you will admit to be true, unless you carry your suspicion to such an unlimited length as to imagine that they will, among their iniquitous acts, destroy and dismember the Union. As to the objection of my friend over the way, (Mr. Monroe,) that so few states could by treaty yield that navigation, it has been sufficiently answered, and its futility fully detected, by the gentleman who spoke last.

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

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The consanguinity between the western people and the inhabitants of the other states would alone have a powerful operation to prevent any measures injurious to them from being adopted.

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

Mr. CORBIN. Mr. Chairman, all attempts made to bias the opinion of any gentleman on this great occasion, are, in my opinion, very reprehensible. No member of this committee can be a more zealous supporter of the right of navigating the Mississippi, and the other rights of the aggregate community, than I am. But that right, sir, is in no danger. This has been proven with much ability by my friend to the left, and other gentlemen. We are told that five states may make a treaty. I say that five states can prevent a treaty from being made.

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Will not my argument be of equal force with theirs? How can five states make a treaty? This presupposes that the members from every other state will be absent when the important subject of treaties will be on the carpet. Is this plausible, or does it not amount to an impossibility? He says that the House of Representatives can have no influence in the formation of treaties. I say, they can. Treaties are generally of a commercial nature, being a regulation of commercial intercourse between different nations. In all commercial treaties, it will be necessary to obtain the consent of the representatives.

[Here a storm arose, which was so violent as to compel Mr. Corbin to desist, and the committee to rise.]

SATURDAY, *June* 14, 1788.

A letter from the honorable the president to the Convention was read, stating his inability to attend to his duty in the house to-day.

Whereupon the honorable JOHN TYLER was unanimously elected vice-president, to preside during the inability of the president.

Mr. CORBIN thought the Mississippi subject had been amply discussed. He hoped that the committee would enter into the discussion of the proposed Constitution regularly; but that, if any gentleman would continue the inquiry relative to that river, he would answer him. He moved that they should debate it clause by clause.

Mr. GRAYSON. Mr. Chairman, I conceive the investigation of this subject, which materially concerns the welfare of this country, ought not to wound the feelings of any gentleman. I look upon this as a contest for empire. Our country is equally affected with Kentucky. The Southern States are deeply interested in this subject. If the Mississippi be shut up, emigrations will be stopped entirely. There will be no new states formed on the western waters. This will be a government of seven states. This contest of the Mississippi involves this great national contest; that is, whether one part of the continent shall govern the other. The Northern States have the majority, and will endeavor to retain it. This is, therefore, a contest for dominion — for empire. I apprehend that God and nature have intended, from the extent of territory and fertility of soil, that the

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weight of population should be on this side of the continent. At present, for various reasons, it is on the other side. This dispute concerns every part of Kentucky. A particular investigation ought to offend no gentleman. Mr. Grayson then declared, he hoped the subject would be further continued.

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

[The 3d section, article 1, was then read.]

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

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

[The 4th and 5th sections were then read.]

Mr. MONROE wished that the honorable gentleman, who had been in the federal Convention, would give information respecting the clause concerning elections. He wished to know why Congress had an ultimate control over the time, place, and manner, of elections of representatives, and the time and manner of that of senators, and also why there was an exception as to the place of electing senators.

Mr. MADISON. Mr. Chairman, the reason of the exception was, that, if Congress could fix the place of choosing the senators, it might compel the state legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience, and was not necessary for the object of regulating the elections. But it was necessary to give the general government a control over the time and manner of choosing the senators, to prevent its own dissolution.

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

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

Mr. MADISON wondered that this clause should meet with a shadow of objection. It was possible, he observed, that the two branches might not agree concerning the time

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of adjournment, and this possibility suggested the power given the President of adjourning both houses to such time as he should think proper, in case of their disagreement. That it would be very exceptionable to allow the senators, or even the representatives, to adjourn, without the consent of the other house, at any season whatsoever, without any regard to the situation of public exigencies. That it was possible, in the nature of things, that some inconvenience might result from it; but that it was as well secured as possible.

Gov. RANDOLPH observed, that the Constitution of Massachusetts was produced as an example, in the grand Convention, in favor of this power given to the President. If, said his excellency, he be honest, he will do what is right: if dishonest, the representatives of the people will have the power of impeaching him.

[The 6th section was then read.]

Mr. HENRY. Mr. Chairman, our burden should, if possible, be rendered more light. I was in hopes some other gentleman would have objected to this part. The pay of the members is, by the Constitution, to be fixed by themselves, without limitation or restraint. They may therefore indulge themselves in the fullest extent. They may make their compensation as high as they please. I suppose, if they be good men, their own delicacy will lead them to be satisfied with moderate salaries. But there is no security for this, should they be otherwise inclined. I really believe that, if the state legislatures were to fix their pay, no inconvenience would result from it, and the public mind would be better satisfied. But in the same section there is a defect of a much greater consequence. There is no restraint on corruption. They may be appointed to offices without any material restriction, and the principal source of corruption in representatives is the hope or expectation of offices and emoluments. After the first organization of offices, and the government is put in motion, they may be appointed to any existing offices which become vacant, and they may create a multiplicity of offices, in order thereafter to be appointed to them. What says the clause? "No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments

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whereof shall have been increased, during such time." This is an idea strangely expressed.

He shall not accept of any office created during the time he is elected for, or of any office whereof the emoluments have been increased in that time. Does not this plainly say that, if an office be not created during the time for which he is elected, or if its emoluments be not increased during such time, he may accept of it? I can see it in no other light. If we wish to preclude the enticement to getting offices, there is a clear way of expressing it. If it be better that Congress should go out of their representative offices by accepting other offices, then it ought to be so. If not, we require an amendment in the clause, that it shall not be so. I may be wrong. Perhaps the honorable member may be able to give a satisfactory answer on this subject.

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

It was thought improper to leave it to the state legislatures, because it is improper that one government should be dependent on another; and the great inconveniences experienced under the old Confederation show the states would be operated upon by local considerations, as contradistinguished from general and national interests. Experience shows us that they have been governed by such heretofore, and reason instructs us that they would be influenced by them again. This theoretic inconvenience of leaving to Congress the fixing their compensations is more than counterbalanced by this in the Confederation — that the state legislatures had a right to determine the pay of the members of Congress,

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which enabled the states to destroy the general government. There is no instance where this power has been abused. In America, legislative bodies have reduced their own wages lower, rather than augmented them. This is a power which cannot be abused without rousing universal attention and indignation. What would be the consequence of the Virginian legislature raising their pay to four or five pounds each per day? The universal indignation of the people. Should the general Congress annex wages disproportionate to their service, or repugnant to the sense of the community, they would be universally execrated. The certainty of incurring the general detestation of the people will prevent abuse.

It was conceived that the great danger was in creating new offices, which would increase the burdens of the people; and not in a uniform admission of all meritorious characters to serve their country in the old offices. There is no instance of any state constitution which goes as far as this. It was thought to be a mean between two extremes. It guards against abuse by taking away the inducement to create new offices, or increase the emolument of old offices; and it gives them an opportunity of enjoying, in common with other citizens, any of the existing offices which they may be capable of executing. To have precluded them from this, would have been to exclude them from a common privilege to which every citizen is entitled, and to prevent those who had served their country with the greatest fidelity and ability from being on a par with their fellow-citizens. I think it as well guarded as reason requires; more so than the constitution of any other nation.

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

Mr. TYLER was afraid that, as their compensations were not fixed in the Constitution, Congress might fix them so low, that none but rich men could go; by which the government might terminate in an aristocracy. The states

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might choose men noted for their wealth and influence, and state influence would govern the Senate. This, though not the most capital objection, he thought was considerable, when joined to others of greater magnitude. He thought the gentleman's account of it was by no means satisfactory. A parallel had been drawn between this power in Congress of fixing their compensations, and that of our Assembly fixing the quantum of their salaries. He was of opinion the comparison did not apply, as there was less responsibility in the former than in the latter case. He dreaded that great corruption would take place, and wished to have it amended so as to prevent it.

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

Most of the great officers have been taken out of Congress, such as ambassadors to foreign courts, &c. A number of offices have been unnecessarily created, and ambassadors have been unnecessarily sent to foreign countries — to countries with which we have nothing to do. If the present Congress exceeded the limits of propriety, though extremely limited with respect to power in the creation of offices, what may not the future Congress do, when they have, by this system, a full scope of creating what offices and annexing what salaries they please? There are but few members in the Senate and lower house. They may all get offices at different times, as they are not excluded from being appointed to existing offices for the time for which they shall have been elected. Considering the corruption of human

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nature, and the general tendency of mankind to promote their own interest, I think there is great danger. I am confirmed in my opinion from what I have seen already in Congress, and among other nations. I wish this part, therefore, to be amended, by prohibiting any senator or representative from being appointed to any office during the time for which he was elected, and by fixing their emoluments; though I would not object to the Constitution on this account solely, were there no other defect.

Mr. MADISON. Mr. Chairman, let me ask those who oppose this part of the system, whether any alteration would not make it equally, or more liable to objections. Would it be better to fix their compensations. Would not this produce inconveniences? What authorizes us to conclude that the value of coins will continue always the same? Would it be prudent to make them dependent on the state governments for their salaries—on those who watch them with jealous eyes, and who consider them as encroaching, not on the people, but on themselves? But the worthy member supposes that Congress will fix their wages so low, that only the rich can fill the offices of senators and representatives. Who are to appoint them? The rich? No, sir; the people are to choose them. If the members of the general government were to reduce their compensations to a trifle, before the evil suggested could happen, the people could elect other members in their stead, who would alter that regulation. The people do not choose them for their wealth. If the state legislatures choose such men as senators, it does not influence the people at large in their election of representatives. They can choose those who have the most merit and least wealth. If Congress reduce their wages to a trifle, what shall prevent the states from giving a man of merit so much as will be an adequate compensation? I think the evil very remote; and if it were now to happen, the remedy is in our own hands, and may by ourselves be applied.

Another gentleman seems to apprehend infinite mischief from a possibility that any member of Congress may be appointed to an office, although he ceases to be a member the moment he accepts it. What will be the consequence of precluding them from being so appointed? If you have in your country one man whom you could, in time of danger,

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trust, above all others, with an office of high importance, he cannot undertake it till two years expire if he be a representative, or till six years elapse if a senator. Suppose America was engaged in war, and the man of the greatest military talents and approved fidelity was a member of either house; would it be right that this man, who could lead us to conquer, and who could save his country from destruction, could not be made general till the term of his election expired? Before that time we might be conquered by our enemies. This will apply to civil as well as military officers. It is impolitic to exclude from the service of his country, in any office, the man who may be most capable of discharging its duties, when they are most wanting.

The honorable gentleman said, that those who go to Congress will look forward to offices, as a compensation for their services, rather than salaries. Does he recollect that they shall not fill offices created by themselves? When they go to Congress, the old offices will be filled. They cannot make any probable calculation that the men in office will die, or forfeit their offices. As they cannot get any new offices, one of these contingencies must happen before they can get any office at all. The chance of getting an office is, therefore, so remote, and so very distant, that it cannot be considered as a sufficient reason to operate on their minds to deviate from their duty.

Let any man calculate in his own mind the improbability of a member of the general government getting into an office, when he cannot fill any office newly created, and when he finds all the old offices filled at the time he enters into Congress. Let him view the danger and impolicy of precluding a member of Congress from holding existing offices, and the danger of making one government dependent on another, and he will find that both clauses deserve applause.

The observations made by several honorable members illustrate my opinion, that it is impossible to devise any system agreeable to all. When objections so contradictory are brought against it, how shall we decide? Some gentlemen object to it because they may make their wages too high, others object to it because they may make them too low. If it is to be perpetually attacked by principles so repugnant, we may cease to discuss. For what is the object of our discussion? Truth, sir. To draw a true and just conclu-

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sion. Can this be done without rational premises and syllogistic reasoning?

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

Mr. GRAYSON. Mr. Chairman, I acknowledge that the honorable gentleman has represented the clause rightly as to their exclusion from new offices; but is there any clause to hinder them from giving offices to uncles, nephews, brothers, and other relations and friends? I imagine most of the offices will be created the first year, and then gentlemen will be tempted to carry on this accommodation.

A worthy member has said — what had been often said before — that, suppose a war took place, and the most experienced and able man was unfortunately in either house, he could not be made general, if the proposed amendment was

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adopted. Had he read the clause, he would have discovered that it did not extend to military offices, and that the restriction extends to civil offices only. No case can exist, with respect to civil offices, that would occasion a loss to the public, if the members of both houses were precluded from holding any office during the time for which they were elected. The old Confederation is so defective in point of power, that no danger can result from creating offices under it; because those who hold them cannot be paid. The power of making paper money will not be exercised. This country is so thoroughly sensible of the impropriety of it, that no attempt will be made to make any more. So that no danger can arise, as they have not power to pay, if they appoint, officers. Why not make this system as secure as that, in this respect? A great number of offices will be created, to satisfy the wants of those who shall be elected. The worthy member says, the electors can alter them. But have the people the power of making honest men be elected? If he be an honest man, and his wages so low that he could not pay for his expenses, he could not serve them if elected. But there are many thirsting after offices more than public good. Political adventurers go up to Congress solely to advance their own particular emoluments. It is so in the British House of Commons. There are two sets always in that house — one, the landed interest, the most patriotic and respectable; the other, a set of dependants and fortune-hunters, who are elected for their own particular interest, and are willing to sell the interest of their constituents to the crown. The same division may happen among our representatives. This clause might as well not be guarded at all, as in this flimsy manner. They cannot be elected to offices for the terms for which they were elected, and continue to be members of Congress. But as they can create as many offices as they please for the particular accommodation of their friends, it might as well not be guarded at all. Upon the whole, I consider it entirely imperfect.

[The 7th section read.]

Mr. GRAYSON objected to the power of the Senate to propose or concur with amendments to money bills. He looked upon the power of proposing amendments to be equal, in principle, to that of originating, and that they were, in

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fact, the same. As this was, in his opinion, a departure from that great principle which required that the immediate representatives of the people only should interfere with money bills, he wished to know the reasons on which it was founded. The lords in England had never been allowed to intermeddle with money bills. He knew not why the Senate should. In the lower house, said he, the people are represented according to their numbers. In the upper house, the states are represented in their political capacities. Delaware, or Rhode Island, has as many representatives here as Massachusetts. Why should the Senate have a right to intermeddle with money, when the representation is neither equal nor just?

Mr. MADISON. Mr. Chairman, the criticism made by the honorable member is, that there is an ambiguity in the words, and that it is not clearly ascertained where the origination of money bills may take place. I suppose the first part of the clause is sufficiently expressed to exclude all doubts. The gentlemen who composed the Convention divided in opinion concerning the utility of confining this to any particular branch. Whatever it be in Great Britain, there is a sufficient difference between us and them to render it inapplicable to this country. It has always appeared to me to be a matter of no great consequence, whether the Senate had a right of originating or proposing amendments to money bills, or not. To withhold it from them would create disagreeable disputes. Some American constitutions make no difference. Virginia and South Carolina are, I think, the only states where this power is restrained. In Massachusetts, and other states, the power of proposing amendments is vested, unquestionably, in their senates. No inconvenience has resulted from it. On the contrary, with respect to South Carolina, this clause is continually a source of disputes. When a bill comes from the other house, the Senate entirely rejects it, and this causes contentions. When you send a bill to the Senate, without the power of making any alteration, you force them to reject the bill altogether, when it would be necessary and advantageous that it should pass.

The power of proposing alterations removes this inconvenience, and does not appear to me at all objectionable. I should have no objection to their having a right of originating

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such bills. People would see what was done, and it would add the intelligence of one house to that of the other. It would be still in the power of the other house to obstruct any injudicious measure proposed by them.

There is no landmark or constitutional provision in Great Britain, which prohibits the House of Lords from intermeddling with money bills; but the House of Commons have established this rule. Yet the lords insist on their having a right to originate them, as they possess great property, as well as the commons, and are taxed like them. The House of Commons object to their claim, lest they should too lavishly make grants to the crown, and increase the taxes. The honorable member says that there is no difference between the right of originating bills and proposing amendments. There is some difference, though not considerable. If any grievances should happen in consequence of unwise regulations in revenue matters, the odium would be divided, which will now be thrown on the House of Representatives. But you may safely lodge this power of amending with the Senate. When a bill is sent with proposed amendments to the House of Representatives, if they find the alterations defective, they are not conclusive. The House of Representatives are the judges of their propriety, and the recommendation of the Senate is nothing. The experience of this state justifies this clause. The House of Delegates has employed weeks in forming a money bill; and because the Senate had no power of proposing amendments, the bill was lost altogether, and a new bill obliged to be again introduced, when the insertion of one line by the Senate would have done. Those gentlemen who oppose this clause will not object to it when they recollect that the senators are appointed by the states, as the present members of Congress are appointed; for, as they will guard the political interests of the states in other respects, they will attend to them very probably in their amendments to money bills. I think this power, for these considerations, is useful and necessary.

Mr. GRAYSON still considered the power of proposing amendments to be the same, in effect, as that of originating. The Senate could strike out every word of the bill, except the word *whereas*, or any other introductory word, and might substitute new words of their own. As the state of Delaware was not so large as the county of Augusta, and Rhode

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Island was still less, and yet had an equal suffrage in the Senate, he could not see the propriety of giving them this power, but referred it to the judgment of the house.

[The 8th section read.]

Mr. CLAY wished to be informed why the Congress were to have power to provide for calling forth the militia, to put the laws of the Union into execution.

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

Mr. GEORGE MASON. Mr. Chairman, unless there be some restrictions on the power of calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions, we may very easily see that it will produce dreadful oppressions. It is extremely unsafe, without some alterations. It would be to use the militia to a very bad purpose, if any disturbance happened in New Hampshire, to call them from Georgia. This would harass the people so much that they would agree to abolish the use of the militia, and establish a standing army. I conceive the general government ought to have power over the militia, but it ought to have some bounds. If gentlemen say that the militia of a neighboring state is not sufficient, the government ought to have power to call forth those of other states, the most convenient and contiguous. But in this case, the consent of the state legislatures ought to be had. On *real* emergencies, this consent will never be denied, each state being concerned in the safety of the rest. This power may be restricted without any danger. I wish such an amendment as this — that the militia of any state should not be marched beyond the limits of the adjoining state; and if it be necessary to draw them from one end of the continent to

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the other, I wish such a check, as the consent of the state legislature, to be provided. Gentlemen may say that this would impede the government, and that the state legislatures would counteract it by refusing their consent. This argument may be applied to all objections whatsoever. How is this compared to the British constitution? Though the king may declare war, the Parliament has the means of carrying it on. It is not so here. Congress can do both. Were it not for that check in the British government, the monarch would be a despot. When a war is necessary for the benefit of the nation, the means of carrying it on are never denied. If any unjust requisition be made on Parliament, it will be, as it ought to be, refused. The same principle ought to be observed in our government. In times of real danger, the states will have the same enthusiasm in aiding the general government, and granting its demands, which is seen in England, when the king is engaged in a war apparently for the interest of the nation. This power is necessary; but we ought to guard against danger. If ever they attempt to harass and abuse the militia, they may abolish them, and raise a standing army in their stead. There are various ways of destroying the militia. A standing army may be perpetually established in their stead. I abominate and detest the idea of a government, where there is a standing army. The militia may be here destroyed by that method which has been practised in other parts of the world before; that is, by rendering them useless — by disarming them. Under various pretences, Congress may neglect to provide for arming and disciplining the militia; and the state governments cannot do it, for Congress has an exclusive right to arm them, &c. Here is a line of division drawn between them — the state and general governments. The power over the militia is divided between them. The national government has an exclusive right to provide for arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States. The state governments have the power of appointing the officers, and of training the militia, according to the discipline prescribed by Congress, if they should think proper to prescribe any. Should the national government wish to render the militia useless, they may neglect them, and let them perish, in order to have a pretence of establishing a standing army.

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

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

The English Parliament never pass a mutiny bill but for

* Sir William Keith.

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one year. This is necessary; for otherwise the soldiers would be on the same footing with the officers, and the army would be dissolved. One mutiny bill has been here in force since the revolution. I humbly conceive there is extreme danger of establishing cruel martial regulations. If, at any time, our rulers should have unjust and iniquitous designs against our liberties, and should wish to establish a standing army, the first attempt would be to render the service and use of militia odious to the people themselves — subjecting them to unnecessary severity of discipline in time of peace, confining them under martial law, and disgusting them so much as to make them cry out, "Give us a standing army!" I would wish to have some check to exclude this danger; as, that the militia should never be subject to martial law but in time of war. I consider and fear the natural propensity of rulers to oppress the people. I wish only to prevent them from doing evil. By these amendments I would give necessary powers, but no unnecessary power. If the clause stands as it is now, it will take from the state legislatures what divine Providence has given to every individual — the means of self-defence. Unless it be moderated in some degree, it will ruin us, and introduce a standing army.

Mr. MADISON. Mr. Chairman, I most cordially agree, with the honorable member last up, that a standing army is one of the greatest mischiefs that can possibly happen. It is a great recommendation for this system, that it provides against this evil more than any other system known to us, and, particularly, more than the old system of confederation. The most effectual way to guard against a standing army, is to render it unnecessary. The most effectual way to render it unnecessary, is to give the general government full power to call forth the militia, and exert the whole natural strength of the Union, when necessary. Thus you will furnish the people with sure and certain protection, without recurring to this evil; and the certainty of this protection from the whole will be a strong inducement to individual exertion. Does the organization of the government warrant a belief that this power will be abused? Can we believe that a government of a federal nature, consisting of many coëqual sovereignties, and particularly having one branch chosen from the people, would drag the militia unnecessarily to an immense distance? This, sir, would be unworthy the most arbitrary despot.

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They have no temptation whatever to abuse this power; such abuse could only answer the purpose of exciting the universal indignation of the people, and drawing on themselves the general hatred and detestation of their country.

I cannot help thinking that the honorable gentleman has not considered, in all its consequences, the amendment he has proposed. Would this be an equal protection, sir, or would it not be a most partial provision? Some states have three or four states in contact. Were this state invaded, as it is bounded by several states, the militia of three or four states would, by this proposition, be obliged to come to our aid; and those from some of the states would come a far greater distance than those of others. There are other states, which, if invaded, could be assisted by the militia of one state only, there being several states which border but on one state. Georgia and New Hampshire would be infinitely less safe than the other states. Were we to adopt this amendment, we should set up those states as butts for invasions, invite foreign enemies to attack them, and expose them to peculiar hardships and dangers. Were the militia confined to any limited distance from their respective places of abode, it would produce equal, nay, more inconveniences. The principles of equality and reciprocal aid would be destroyed in either case.

I cannot conceive that this Constitution, by giving the general government the power of arming the militia, takes it away from the state governments. The power is concurrent, and not exclusive. Have we not found, from experience, that, while the power of arming and governing the militia has been solely vested in the state legislatures, they were neglected and rendered unfit for immediate service? Every state neglected too much this most essential object. But the general government can do it more effectually. Have we not also found that the militia of one state were almost always insufficient to succor its harassed neighbor? Did all the states furnish their quotas of militia with sufficient promptitude? The assistance of one state will be of little avail to repel invasion. But the general head of the whole Union can do it with effect, if it be vested with power to use the aggregate strength of the Union. If the regulation of the militia were to be committed to the executive authority alone, there might be reason for providing

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restrictions. But, sir, it is the legislative authority that has this power. They must make a law for the purpose.

The honorable member is under another mistake. He wishes martial law to be exercised only in time of war, under an idea that Congress can establish it in time of peace. The states are to have the authority of training the militia according to the congressional discipline; and of governing them at all times when not in the service of the Union. Congress is to govern such part of them as may be employed in the actual service of the United States; and such part only can be subject to martial law. The gentlemen in opposition have drawn a most tremendous picture of the Constitution in this respect. Without considering that the power was absolutely indispensable, they have alarmed us with the possible abuse of it, but have shown no inducement or motive to tempt them to such abuse. Would the legislature of the state drag the militia of the eastern shore to the western frontiers, or those of the western frontiers to the eastern shore, if the local militia were sufficient to effect the intended purpose? There is something so preposterous, and so full of mischief, in the idea of dragging the militia unnecessarily from one end of the continent to the other, that I think there can be no ground of apprehension. If you limit their power over the militia, you give them a pretext for substituting a standing army. If you put it in the power of the state governments to refuse the militia, by requiring their consent, you destroy the general government, and sacrifice particular states. The same principles and motives which produce disobedience to requisitions, will produce refusal in this case.

The restrictions which the honorable gentleman mentioned to be in the British constitution are all provisions against the power of the executive magistrate; but the House of Commons may, if they be so disposed, sacrifice the interest of their constituents in all those cases. They may prolong the duration of mutiny bills, and grant supplies to the king to carry on an impolitic war. But they have no motives to do so; for they have strong motives to do their duty. We have more ample security than the people of Great Britain. The powers of the government are more limited and guarded, and our representatives are more responsible than the members of the British House of Commons.

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

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

Mr. HENRY. Mr. Chairman, in my judgment the friends of the opposition have to act cautiously. We must make a firm stand before we decide. I was heard to say, a few days ago, that the sword and purse were the two great instruments of government; and I professed great repugnance at parting with the purse, without any control, to the proposed system of government. And now, when we proceed in this formidable compact, and come to the national defence, the sword, I am persuaded we ought to be still more cautious and circumspect; for I feel still more reluctance to surrender this most valuable of rights.

The honorable member who has risen to explain several parts of the system was pleased to say, that the best way of avoiding the danger of a standing army, was, to have the militia in such a way as to render it unnecessary; and that, as the new government would have power over the militia, we should have no standing army — it being unnecessary. This argument destroys itself. It demands a power, and denies the probability of its exercise. There are suspicions of power on one hand, and absolute and unlimited confi-

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dence on the other. I hope to be one of those who have a large share of suspicion. I leave it to this house, if there be not too small a portion on the other side, by giving up too much to that government. You can easily see which is the worst of two extremes. Too much suspicion may be corrected. If you give too little power to-day, you may give more to-morrow. But the reverse of the proposition will not hold. If you give too much power to-day, you cannot retake it to-morrow: for to-morrow will never come for that purpose. If you have the fate of other nations, you will never see it. It is easier to supply deficiencies of power than to take back excess of power. This no man can deny.

But, says the honorable member, Congress will keep the militia armed; or, in other words, they will do their duty. Pardon me if I am too jealous and suspicious to confide in this remote possibility. My honorable friend went on a supposition that the American rulers, like all others, will depart from their duty without bars and checks. No government can be safe without checks. Then he told us they had no temptation to violate their duty, and that it would be their interest to perform it. Does he think you are to trust men who cannot have separate interests from the people? It is a novelty in the political world (as great a novelty as the system itself) to find rulers without private interests, and views of personal emoluments, and ambition. His supposition, that they will not depart from their duty, as having no interest to do so, is no satisfactory answer to my mind. This is no check. The government may be most intolerable and destructive, if this be our only security.

My honorable friend attacked the honorable gentleman with universal principles — that, in all nations and ages, rulers have been actuated by motives of individual interest and private emoluments, and that in America it would be so also. I hope, before we part with this great bulwark, this noble palladium of safety, we shall have such checks interposed as will render us secure. The militia, sir, is our ultimate safety. We can have no security without it. But then, he says that the power of arming and organizing the militia is concurrent, and to be equally exercised by the general and state governments. I am sure, and I trust in the candor of that gentleman, that he will recede from that

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opinion, when his recollection will be called to the particular clause which relates to it.

As my worthy friend said, there is a positive partition of power between the two governments. To Congress is given the power of "arming, organizing, and disciplining the militia, and governing such part of them as may be employed in the service of the United States." To the state legislatures is given the power of "appointing the officers, and training the militia according to the discipline prescribed by Congress." I observed before, that, if the power be concurrent as to arming them, it is concurrent in other respects. If the states have the right of arming them, &c., concurrently, Congress has a concurrent power of appointing the officers, and training the militia. If Congress have that power, it is absurd. To admit this mutual concurrence of powers will carry you into endless absurdity — that Congress has nothing exclusive on the one hand, nor the states on the other. The rational explanation is, that Congress shall have exclusive power of arming them, &c., and that the state governments shall have exclusive power of appointing the officers, &c. Let me put it in another light.

May we not discipline and arm them, as well as Congress, if the power be concurrent? so that our militia shall have two sets of arms, double sets of regimentals, &c.; and thus, at a very great cost, we shall be doubly armed. The great object is, that every man be armed. But can the people afford to pay for double sets of arms, &c.? Every one who is able may have a gun. But we have learned, by experience, that, necessary as it is to have arms, and though our Assembly has, by a succession of laws for many years, endeavored to have the militia completely armed, it is still far from being the case. When this power is given up to Congress without limitation or bounds, how will your militia be armed? You trust to chance; for sure I am that that nation which shall trust its liberties in other hands cannot long exist. If gentlemen are serious when they suppose a concurrent power, where can be the impolicy to amend it? Or, in other words, to say that Congress shall not arm or discipline them, till the states shall have refused or neglected to do it? This is my object. I only wish to bring it to what they themselves say is implied. Implication is to be the foundation of our civil liberties; and when you speak of arming the militia by a

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concurrence of power, you use implication. But implication will not save you, when a strong army of veterans comes upon you. You would be laughed at by the whole world, for trusting your safety implicitly to implication.

The argument of my honorable friend was, that rulers might tyrannize. The answer he received was, that they will not. In saying that they would not, he admitted they might. In this great, this essential part of the Constitution, if you are safe, it is not from the Constitution, but from the virtues of the men in government. If gentlemen are willing to trust themselves and posterity to so slender and improbable a chance, they have greater strength of nerves than I have.

The honorable gentleman, in endeavoring to answer the question why the militia were to be called forth to execute the laws, said that the civil power would probably do it. He is driven to say, that the civil power may do it instead of the militia. Sir, the military power ought not to interpose till the civil power refuse. If this be the spirit of your new Constitution, that the laws are to be enforced by military coercion, we may easily divine the happy consequences which will result from it. The civil power is not to be employed at all. If it be, show me it. I read it attentively, and could see nothing to warrant a belief that the civil power can be called for. I should be glad to see the power that authorizes Congress to do so. The sheriff will be aided by military force. The most wanton excesses may be committed under color of this; for every man in office, in the states, is to take an oath to support it in all its operations. The honorable gentleman said, in answer to the objection that the militia might be marched from New Hampshire to Georgia, that the members of the government would not attempt to excite the indignation of the people. Here, again, we have the general unsatisfactory answer, that they will be virtuous, and that there is no danger.

Will gentlemen be satisfied with an answer which admits of dangers and abuses if they be wicked? Let us put it out of their power to do mischief. I am convinced there is no safety in the paper on the table as it stands now. I am sorry to have an occasion to pass a eulogium on the British government, as gentlemen may object to it. But how natural it is, when comparing deformities to beauty, to be

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struck with the superiority of the British government to that system! In England, self-love — self-interest — powerfully stimulates the executive magistrate to advance the prosperity of the nation. In the most distant part, he feels the loss of his subjects. He will see the great advantage of his posterity inseparable from the felicity of his people. Man is a fallen creature, a fallible being, and cannot be depended on without self-love. Your President will not have the same motives of self-love to impel him to favor your interests. His political character is but transient, and he will promote, as much as possible, his own private interests. He will conclude, the constant observation has been that he will abuse his power, and that it is expected. The king of England has a more permanent interest. His stock, his family, is to continue in possession of the same emolument. The more flourishing his nation, the more formidable and powerful is he. The sword and purse are not united, in that government, in the same hands, as in this system. Does not infinite security result from a separation?

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

Mr. NICHOLAS. Mr. Chairman, the great object of government, in every country, is security and public defence I suppose, therefore, that what we ought to attend to here, is, what is the best mode of enabling the general government to protect us. One of three ways must be pursued

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for this purpose. We must either empower them to employ, and rely altogether on, a standing army; or depend altogether on militia; or else we must enable them to use the one or the other of these two ways, as may be found most expedient. The least reflection will satisfy us that the Convention has adopted the only proper method. If a standing army were alone to be employed, such an army must be kept up in time of peace as would be sufficient in war. The dangers of such an army are so striking that every man would oppose the adoption of this government, had it been proposed by it as the only mode of defence. Would it be safe to depend on militia alone, without the agency of regular forces, even in time of war? Were we to be invaded by a powerful, disciplined army, should we be safe with militia? Could men unacquainted with the hardships, and unskilled in the discipline of war, — men only inured to the peaceable occupations of domestic life, — encounter with success the most skilful veterans, inured to the fatigues and toils of campaigns? Although some people are pleased with the theory of reliance on militia, as the sole defence of a nation, yet I think it will be found, in practice, to be by no means adequate. Its inadequacy is proved by the experience of other nations. But were it fully adequate, it would be unequal. If war be supported by militia, it is by personal service. The poor man does as much as the rich. Is this just? What is the consequence when war is carried on by regular troops? They are paid by taxes raised from the people, according to their property; and then the rich man pays an adequate share.

But, if you confine yourselves to militia alone, the poor man is oppressed. The rich man exempts himself by furnishing a substitute. And, although it be oppressive to the poor, it is not advantageous to the rich? For what he gives would pay regular troops. It is therefore neither safe nor just to depend entirely on militia. As these two ways are ineligible, let us consider the third method. Does this Constitution put this on a proper footing? It enables Congress to raise an army when necessary, or to call forth the militia when necessary. What will be the consequence of their having these two powers? Till there be a necessity for an army to be raised, militia will do. And when an army will be raised, the militia will still be employed, which

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will render a less numerous army sufficient. By these means, there will be a sufficient defence for the country, without having a standing army altogether, or oppressing the people. The worthy member has said, that it ought to be a part of the Constitution that the militia ought not to go out of the state without the consent of the state legislature. What would be the consequence of this? The general defence is trusted to the general government. How is it to protect the Union? It must apply to the state governments before it can do it. Is this right? Is it not subjecting the general will to the particular will, and exposing the general defence to the particular caprice of the members of the state governments? This would entirely defeat the power given to Congress to provide for the general defence; and unless the militia were to aid in the execution of the laws when resisted, the other powers of Congress would be nugatory. But he has said that this idea is justified by the English history; for that the king has the power of the sword, but must apply to the commons for the means of using it — for the purse. This is not a similar case. The king and commons are parts of the same government. But the general government is separate and perfectly distinct from the individual governments of the states. Should Congress be obliged to apply to the particular states for the militia, they may be refused, and the government overturned. To make the case similar, he ought to show us that the king and Parliament were obliged to call on some other power to raise forces, and provide for the means of carrying on war; for, otherwise, there is no similitude.

If the general government be obliged to apply to the states, a part will be thereby rendered superior to the whole. What are to be the effects of the amendments proposed? To destroy one of the most beneficial parts of the Constitution, put an obstacle in the way of the general government, and put it in the power of the state governments to take away the aid of the militia. Who will be most likely to want the aid of the militia? The Southern States, from their situation. Who are the most likely to be called for? The Eastern States, from their strength, &c. Should we put it in the power of particular states to refuse the militia, it ought to operate against ourselves. It is the height of bad policy to alter this part of the system. But it is said, the

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militia are to be disarmed. Will they be worse armed than they are now? Still, as my honorable friend said, the states would have power to arm them. The power of arming them is concurrent between the general and state governments; for the power of arming them rested in the state governments before; and although the power be given to the general government, yet it is not given exclusively; for, in every instance where the Constitution intends that the general government shall exercise any power exclusively of the state governments, words of exclusion are particularly inserted. Consequently, in every case where such words of exclusion are not inserted, the power is concurrent to the state governments and Congress, unless where it is impossible that the power should be exercised by both. It is, therefore, not an absurdity to say, that Virginia may arm the militia, should Congress neglect to arm them. But it would be absurd to say that we should arm them after Congress had armed them, when it would be unnecessary; or that Congress should appoint the officers, and train the militia, when it is expressly excepted from their powers.

But his great uneasiness is, that the militia may be under martial law when not on duty. A little attention will be sufficient to remove this apprehension. The Congress is to have power "to provide for the arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States." Another part tells you that they are to provide for calling them forth, to execute the laws of the Union, suppress insurrections, and repel invasions. These powers only amount to this — that they can only call them forth in these three cases, and that they can only govern such part of them as may be in the actual service of the United States. This causes a sufficient security that they will not be under martial law but when in actual service. If, sir, a mutiny bill has continued since the revolution, recollect that this is done under the present happy government. Under the new government, no appropriation of money, to the use of raising or supporting an army, shall be for a longer term than two years. The President is to command. But the regulation of the army and navy is given to Congress. Our representatives will be a powerful check here. The influence of the commons, in England, in this case, is very predominant. But the worthy member

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on the other side of the house has said that the militia are the great bulwark of the nation, and wishes to take no step to bring them into disuse. What is the inference? He wishes to see the militia employed. The Constitution provides what he wants. This is, to bring them frequently into use. If he expects that, by depriving the general government of the power of calling them into more frequent use, they will be rendered more useful and expert, he is greatly deceived. We ought to part with the power to use the militia to somebody. To whom? Ought we not to part with it for the general defence? If you give it not to Congress, it may be denied by the states. If you withhold it, you render a standing army absolutely necessary; for if they have not the militia, they must have such a body of troops as will be necessary for the general defence of the Union.

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

From his argument on this occasion, and his eulogium on the executive magistrate of Britain, it might be inferred that the executive magistrate here was to have the power of calling forth the militia. What is the idea of those gentlemen who heard his argument on this occasion? Is it not that the President is to have this power — that President, who, he tells us, is not to have those high feelings, and that fine sensibility, which the British monarch possesses? No, sir, the President is not to have this power. God forbid we should ever see a public man in this country who should

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

Mr. MADISON. Mr. Chairman, the honorable gentleman has laid much stress on the maxim, that the purse and sword ought not to be put in the same hands, with a view of pointing out the impropriety of vesting this power in the general government. But it is totally inapplicable to this question. What is the meaning of this maxim? Does it mean that the sword and purse ought not to be trusted in the hands of the same government? This cannot be the meaning; for there never was, and I can say there never will be, an efficient government, in which both are not vested. The only rational meaning is, that the sword and purse are not to be given to the same member. Apply it to the British government, which has been mentioned. The sword is in the hands of the British king; the purse in the hands of the Parliament. It is so in America, as far as any analogy can exist. Would the honorable member say that the sword ought to be put in the hands of the representatives of the people, or in other hands independent of the government altogether? If he says so, it will violate the meaning of that maxim. This would be a novelty hitherto unprecedented. The purse is in the hands of the representatives of the people. They have the appropriation of all moneys. They have the direction and regulation of land and naval forces. They are to provide for calling forth the militia; and the

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President is to have the command, and, in conjunction with the Senate, to appoint the officers. The means ought to be commensurate to the end. The end is general protection. This cannot be effected without a general power to use the strength of the Union.

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

If we review the history of all republics, we are justified in the supposition that, if the bands of the government be relaxed, confusion will ensue. Anarchy ever has produced, and I fear ever will produce, despotism. What was the state of things that preceded the wars and revolutions in Germany? Faction and confusion. What produced the disorders and commotions of Holland? The like causes. In this commonwealth, and every state in the Union, the relaxed operation of the government has been sufficient to alarm the friends of their country. The rapid increase of population in every state is an additional reason to check dissipation and licentiousness. Does it not strongly call for the friends of republican government to endeavor to establish a republican organization? A change is absolutely necessary. I can see no danger in submitting to practice an experiment which seems to be founded on the best theoretic principles.

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But the honorable member tells us there is not an equal responsibility delineated, on that paper, to that which is in the English government. Calculations have been made here, that, when you strike off those entirely elected by the influence of the crown, the other part does not bear a greater proportion to the number of their people, than the number fixed in that paper bears to the number of inhabitants in the United States. If it were otherwise, there is still more responsibility in this government. Our representatives are chosen for two years. In Great Britain, they are chosen for seven years. Any citizen may be elected here. In Great Britain, no one can be elected, to represent a county, without having an estate of the value of six hundred pounds sterling a year; nor to represent a corporation, without an annual estate of three hundred pounds. Yet we are told, there is no sympathy or fellow-feeling between the people here and their representatives; but that in England they have both. A just comparison will show that, if confidence be due to the government there, it is due tenfold here.

[Mr. Madison made many other observations, but spoke so very low that he could not be distinctly heard.]

Mr. HENRY. Mr. Chairman, it is now confessed that this is a national government. There is not a single federal feature in it. It has been alleged, within these walls, during the debates, to be national and federal, as it suited the arguments of gentlemen.

But now, when we have heard the definition of it, it is purely national. The honorable member was pleased to say that the sword and purse included every thing of consequence. And shall we trust them out of our hands without checks and barriers? The sword and purse are essentially necessary for the government. Every essential requisite must be in Congress. Where are the purse and sword of Virginia? They must go to Congress. What is become of your country? The Virginian government is but a name. It clearly results, from his last argument, that we are to be consolidated. We should be thought unwise indeed to keep two hundred legislators in Virginia, when the government is, in fact, gone to Philadelphia or New York. We are, as a state, to form no part of the government. Where are your checks? The most essential objects of government are to be adminis-

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tered by Congress. How, then, can the state governments be any check upon them? If we are to be a republican government, it will be consolidated, not confederated.

The means, says the gentleman, must be commensurate to the end. How does this apply? All things in common are left with this government. There being an infinitude in the government, there must be an infinitude of means to carry it on. This is a sort of mathematical government that may appear well on paper, but cannot sustain examination, or be safely reduced to practice. The delegation of power to an adequate number of representatives, and an unimpeded reversion of it back to the people, at short periods, form the principal traits of a republican government. The idea of a republican government, in that paper, is something superior to the poor people. The governing persons are the servants of the people. There, the servants are greater than their masters; because it includes infinitude, and infinitude excludes every idea of subordination. In this the creature has destroyed and soared above the creator. For if its powers be infinite, what rights have the people remaining? By that very argument, despotism has made way in all countries where the people unfortunately have been enslaved by it. We are told, the sword and purse are necessary for the national defence. The junction of these, without limitation, in the same hands, is, by logical and mathematical conclusions, the description of despotism.

The reasons adduced here to-day have long ago been advanced in favor of passive obedience and non-resistance. In 1688, the British nation expelled their monarch for attempting to trample on their liberties. The doctrine of divine right and passive obedience was said to be commanded by Heaven — it was inculcated by his minions and adherents. He wanted to possess, without control, the sword and purse. The attempt cost him his crown. This government demands the same powers. I see reason to be more and more alarmed. I fear it will terminate in despotism. As to his objection of the abuse of liberty, it is denied. The political inquiries and promotions of the peasants are a happy circumstance. A foundation of knowledge is a great mark of happiness. When the spirit of inquiry after political discernment goes forth among the lowest of the people, it rejoices my heart. Why such fearful apprehensions? I

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defy him to show that liberty has been abused. There has been no rebellion here, though there was in Massachusetts Tell me of any country which has been so long without a rebellion. Distresses have been patiently borne, in this country, which would have produced revolutions in other countries. We strained every nerve to make provisions to pay off our soldiers and officers. They, though not paid, and greatly distressed at the conclusion of the war, magnanimously ac quiesced. The depreciation of the circulating currency very much involved many of them, and thousands of other citizens, in absolute ruin; but the same patient fortitude and forbearance marked their conduct. What would the people of England have done in such a situation? They would have resisted the government, and murdered the tyrant. But in this country, no abuse of power has taken place. It is only a general assertion, unsupported, which suggests the contrary. Individual licentiousness will show its baneful consequences in every country, let its government be what it may.

But the honorable gentleman says, responsibility will exist more in this than in the British government. It exists here more in name than any thing else. I need not speak of the executive authority. But consider the two houses — the American Parliament. Are the members of the Senate responsible? They may try themselves, and, if found guilty on impeachment, are to be only removed from office. In England, the greatest characters are brought to the block for their sinister administration. They have a power there, not to dismiss them from office, but from life, for mal-practices. The king himself cannot pardon in this case. How does it stand with respect to your lower house? You have but ten. Whatever number may be there, six is a majority. Will your country afford no temptation, no money to corrupt them? Cannot six fat places be found to accommodate them? They may, after the first Congress, take any place. There will be a multiplicity of places. Suppose they corruptly obtain places. Where will you find them, to punish them? At the farthest parts of the Union; in the ten miles square, or within a state where there is a stronghold. What are you to do when these men return from Philadelphia? Two things are to be done. To detect the offender and bring him to punishment. You will find it difficult to do either.

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In England, the proceedings are openly transacted. They deliver their opinions freely and openly. They do not fear all Europe. Compare it to this. You cannot detect the guilty. The publication from time to time is merely optional in them. They may prolong the period, or suppress it altogether, under pretence of its being necessary to be kept secret. The yeas and nays will avail nothing. Is the publication daily? It may be a year, or once in a century. I know this would be an unfair construction in the common concerns of life. But it would satisfy the words of the Constitution. It would be some security were it once a year, or even once in two years. When the new election comes on, unless you detect them, what becomes of your responsibility? Will they discover their guilt when they wish to be reëlected? This would suppose them to be not only bad, but foolish men, in pursuit of responsibility. Have you a right to scrutinize into the conduct of your representatives? Can any man, who conceives himself injured, go and demand a sight of their journals? But it will be told that I am suspicious. I am answered, to every question, that they will be good men. In England, they see daily what is doing in Parliament. They will hear from their Parliament in one thirty-ninth part of the time that we shall hear from Congress in this scattered country. Let it be proposed, in England, to lay a poll tax, or enter into any measure, that will injure one part and produce emoluments to another, intelligence will fly quickly as the rays of light to the people. They will instruct their representatives to oppose it, and will petition against it, and get it prevented or redressed instantly. Impeachment follows quickly a violation of duty. Will it be so here? You must detect the offence, and punish the defaulter. How will this be done when you know not the offender, even though he had a previous design to commit the misdemeanor? Your Parliament will consist of sixty-five. Your share will be ten out of the sixty-five. Will they not take shelter, by saying they were in the minority — that the men from New Hampshire and Kentucky outvoted them? Thus will responsibility, that great pillar of a free government, be taken away.

The honorable gentleman wished to try the experiment. Loving his country as he does, he would not surely wish to trust his happiness to an experiment, from which much harm, but no good, may result.

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

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

With respect to responsibility, still the honorable member thinks that the House of Representatives and Senate will suffer by a comparison with the British Parliament. I will not repeat the contrast made before, which he has mentioned. He tells us what may be done by our representatives with respect to the admission to offices, and insinuates that less may be done in Great Britain by the members of Parliament. In this country, by this system, no new office can be taken by a member of the government, and if he takes an old one, he loses his seat. If the emoluments of any existing office be increased, he cannot take it. How is it in Great Britain? Any member may have any place; for Parliament may create any new offices they please, or increase the emoluments of existing offices, and yet the members may accept any such places. Any member may accept any office whatever, and go again into Parliament. Does this comparison militate against this system? He tells us the affairs of our country are not alarming. I wish this assertion was well founded. I concur with him in rejoicing to see the people enlightened and vigilant. I should be happy to see the people paying respect to the laws and magistracy. But is respect paid to our laws? Every man's experience will tell him more, perhaps, than any thing I could say.

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Public and private confidence daily and rapidly decrease. Experiments must be made, and in that form which we must find most to the interest of our country.

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

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

The honorable gentleman, speaking of responsibility, has mistaken facts. He says the king cannot pardon offenders found guilty on impeachment. The king can pardon after

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impeachment, though not before. He says, further, that in America every thing is concealed, whereas in England the operations of the government are openly transacted. In England, those subjects which produce impeachments are not opinions. No man ever thought of impeaching a man for an opinion. It would be impossible to discover whether the error in opinion resulted from a wilful mistake of the heart, or an involuntary fault of the head. What are the occasions of impeachments most commonly? Treaties. Are these previously known? No. Till after they are presented to the public eye, they are not known. Those who advised a treaty are not known till then. There ought not to be a publication on the subject of negotiations till they are concluded. So that, when he thinks there is a greater notoriety in this case in England than here, I say he is mistaken. There will be as much notoriety in America as in England. The spirit of the nation occasions the notoriety of their political operations, and not any constitutional requisition. The spirit of liberty will not be less predominant in America, I hope, than there. With respect to a standing army, I believe there was not a member in the federal Convention, who did not feel indignation at such an institution. What remedy, then, could be provided? Leave the country defenceless? In order to provide for our defence, and exclude the dangers of a standing army, the general defence is left to those who are the objects of defence. It is left to the militia, who will suffer if they become the instruments of tyranny. The general government must have power to call them forth when the general defence requires it. In order to produce greater security, the state governments are to appoint the officers. The President, who commands them when in actual service of the Union, is appointed secondarily by the people. This is a further security. Is it not incredible that men who are interested in the happiness of their country — whose friends, relations, and connections, must be involved in the fate of their country — should turn against their country? I appeal to every man whether, if any of our own officers were called upon to destroy the liberty of their country, he believes they would assent to such an act of suicide. The state governments, having the power of appointing them, may elect men who are the most remarkable for their virtue of attachment to their country.

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

He then recurred to the power of impeachment. On this subject he entertained great suspicions. He apologized for being suspicious. He entered into the world with as few suspicions as any man. Young men, he said, were apt to think well of every one, till time and experience taught them better. After a treaty manifestly repugnant to the interests of the country was made, he asked how they were to be punished. Suppose it had been made by the means of bribery and corruption. Suppose they had received one hundred thousand guineas, or louis d'ors, from a foreign nation, for consenting to a treaty, how was the truth to be come at? Corruption and bribery of that kind had happened in other governments, and might in this. The House of Representatives were to impeach them. The senators were to try themselves. If a majority of them were guilty of the crime, would they pronounce themselves guilty? Yet, says he, this is called responsibility. He wished to know in what court the members of the government were to be tried for the commission of indictable offences, or injuries to individuals.

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He acknowledged himself to be no lawyer; but he thought he could see that they could be tried neither in the state nor federal courts. The only means, therefore, of bringing them to punishment, must be by a court appointed by law; and the law to punish them must also be made by themselves. By whom is it to be made? demanded he. By the very men who are interested in not inflicting punishment. Yet, says he, though they make the law, and fix the punishment to be inflicted on themselves, it is called responsibility. If the senators do not agree to the law, it will not be made, and thus they will escape altogether.

[Mr. Mason then animadverted on the ultimate control of Congress over the elections, and was proceeding to prove that it was dangerous, when he was called to order, by Mr. Nicholas, for departing from the clause under consideration. A desultory conversation ensued, and Mr Mason was permitted to proceed. He was of opinion that the contro over elections tended to destroy responsibility. He declared he had en deavored to discover whether this power was really necessary, or what was the necessity of vesting it in the government, but he could find no good reason for giving it; that the reasons suggested were that, in case the states should refuse or neglect to make regulations, or in case they should be prevented from making regulations by rebellion or invasion, then the general government should interpose.]

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

Suppose the state of Virginia should adopt such regulations as gentlemen say, (and in which I accord with all my heart,) and divide the state into ten districts. Suppose, then, that Congress should order, instead of this, that the elections should be held in the borough of Norfolk. Will any man say that any man in Frederick or Berkely county would have any share in this representation, if the members were chosen in Norfolk? Nay, I might go farther, and say that

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the elections for all the states might be had in New York, and then we should have to go so far that the privilege would be lost altogether; for but few gentlemen could afford to go thither. Some of the best friends of the Constitution have advocated that the elections should be in one place. This power is not necessary, and is capable of great abuse. It ought to be confined to the particular cases in which they assert it to be necessary. Whatever gentlemen may think of the opposition, I will never agree to give any power which I conceive to be dangerous.

I have doubts on another point. The 5th section of the 1st article provides, "that each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy." This enables them to keep the negotiations about treaties secret. Under this veil they may conceal any thing and every thing. Why not insert words that would exclude ambiguity and danger? The words of the Confederation, that defective system, are, in this respect, more eligible. What are they? In the last clause of the 9th article it is provided, "that Congress shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as, in their judgment, require secrecy." The proceedings, by that system, are to be published monthly, with certain exceptions. These are proper guards. It is not so here. On the contrary, they may conceal what they please.

Instead of giving information, they will produce suspicion. You cannot discover the advocates of their iniquitous acts. This is an additional defect of responsibility. Neither house can adjourn, without the consent of the other, for more than three days. This is no parliamentary rule. It is untrodden ground, and it appears to me liable to much exception.

The senators are chosen for six years. They are not recallable for those six years, and are reëligible at the end of the six years. It stands on a very different ground from the Confederation. By that system, they were only elected for one year, might be recalled, and were incapable of reëlection. But in the new Constitution, instead of being elected for one, they are chosen for six years. They cannot be recalled, in all that time, for any misconduct, and at the end of that long term may again be elected. What will be

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the operation of this? Is it not probable that those gentlemen, who will be elected senators, will fix themselves in the federal town, and become citizens of that town more than of our state? They will purchase a good seat in or near the town, and become inhabitants of that place. Will it not be, then, in the power of the Senate to worry the House of Representatives into any thing? They will be a continually-existing body. They will exercise those machinations and contrivances which the many have always to fear from the few. The House of Representatives is the only check on the Senate, with their enormous powers. But, by that clause, you give them the power of worrying the House of Representatives into a compliance with any measure. The senators, living on the spot, will feel no inconvenience from long sessions, as they will vote themselves handsome pay, without incurring any additional expenses. Your representatives are on a different ground, from their shorter continuance in office. The gentlemen from Georgia are six or seven hundred miles from home, and wish to go home. The Senate, taking advantage of this, by stopping the other house from adjourning, may worry them into any thing. These are my doubts, and I think the provision not consistent with the usual parliamentary modes.

Mr. LEE, (of Westmoreland.) Mr. Chairman, I am anxious to know the truth on this great occasion. I was in hopes of receiving true information, but have been disappointed. I have heard suspicions against possibility, and not against probability. As to the distinction which lies between the gentlemen for and against the Constitution, — in the first place, most of the arguments the latter use pay no regard to the necessity of the Union, which is our object. In the next place, they use contradictory arguments. It may be remembered that we were told there was great danger of an aristocracy governing this country; for that their wages would be so low, that the rich alone could serve. And what does another gentleman say? That the price will be so high, that they will fix themselves comfortably in office, and, by their power and extravagant emoluments, ruin us. Ought we to adduce arguments like these, which imply a palpable contradiction? We ought to use arguments capable of discussion.

I beg leave to make some reply to what the honorable

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

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

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

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The honorable gentleman last up says, that organizing the militia gives Congress power to punish them when not in the actual service of the government. The gentleman is mistaken in the meaning of the word *organization*, to explain which would unnecessarily take up time. Suffice it to say, it does not include the infliction of punishments. The militia will be subject to the common regulations of war when in actual service; but not in time of peace.

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

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

Mr. MADISON. Mr. Chairman, I cannot think that the explanation of the gentleman last up is founded in reason. It does not say that the militia shall be called out in all cases,

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but in certain cases. There are cases in which the execution of the laws may require the operation of militia, which cannot be said to be an invasion or insurrection. There may be a resistance to the laws which cannot be termed an insurrection.

My honorable friend over the way has opened a new source of argument. He has introduced the assertions of gentlemen out of doors. If we thus depart from regularity, we shall never be able to come to a decision.

If there be any gentleman who is a friend to the government, and says that the elections may or ought to be held in one place, he is an enemy to it on that ground. With respect to the time, place, and manner of elections, I cannot think, notwithstanding the apprehensions of the honorable gentleman, that there is any danger, or, if abuse should take place, that there is not sufficient security. If all the people of the United States should be directed to go to elect in one place, the members of the government would be execrated for the infamous regulation. Many would go to trample them under foot for their conduct; and they would be succeeded by men who would remove it. They would not dare to meet the universal hatred and detestation of the people, and run the risk of the certain dreadful consequences. We must keep within the compass of human probability. If a possibility be the cause of objection, we must object to every government in America. But the honorable gentleman may say that better guards may be provided. Let us consider the objection. The power of regulating the time, place, and manner of elections, must be vested somewhere. It could not be fixed in the Constitution without involving great inconveniences. They could then have no authority to adjust the regulation to the changes of circumstances. The question then is, whether it ought to be fixed unalterably in the state governments, or be subject to the control of the general government. Is it not obvious that the general government would be destroyed without this control? It has already been demonstrated that it will produce many conveniences. Have we not sufficient security against abuse? Consider fully the principles of the government. The sum of the powers given up by the people of Virginia is divided into two classes — one to the federal and the other to the state government. Each is subdivided into three branches. These

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may be kept independent of each other in the one as well as the other. In this system, they are as distinct as is consistent with good policy. This, in my opinion, instead of diminishing, increases the security of liberty more than any government that ever was; for the powers of government which, in every other country, are given to one body, are here given to two, and are favorable to public liberty. With respect to secrecy, if every thing in which it is necessary could be enumerated, I would have no objection to mention them. All the state legislatures can keep secret what they think ought to be concealed. The British House of Commons can do it. They are in this respect under much less restraint than Congress. There never was any legislative assembly without a discretionary power of concealing important transactions, the publication of which might be detrimental to the community. There can be no real danger as long as the government is constructed on such principles.

He objects also to the clause respecting adjournment — that neither house shall, without the consent of the other, adjourn for more than three days. It was before remarked that, if a difference should take place between the houses about the time of adjournment, the President could still determine it; from which no danger could arise, as he is chosen in a secondary degree by the people, and would consequently fix no time which would be repugnant to the sense of the representatives of the people. Another and more satisfactory answer is this: Suppose the Senate wished to chain down the House of Representatives; what is to hinder them from going home? How bring them back again? It would be contrary to the spirit of the Constitution to impede the operations of the government, perhaps at a critical period. I cannot conceive that such difference will often happen. Were the Senate to attempt to prevent an adjournment, it would but serve to irritate the representatives without having the intended effect, as the President could adjourn them. There will not be occasion for the continual residence of the senators at the seat of government. What business have they more than the House of Representatives? The appointment of officers and treaties. With respect to the appointment of officers, a law may be made to grant it to the President alone. It must be supposed there will be but few and subordinate officers to be appointed, as the principal

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offices will be filled. It is observed that the President, when vacancies happen during the recess of the Senate, may fill them till it meets. With respect to treaties, the occasions of forming them will not be many, and will make but a small porportion of the time of session.

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

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

MONDAY, *June* 14, 1788.

The Convention, according to the order of the day, again resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government. Mr. WYTHE in the chair.

[The 8th section still under consideration. See page 378.]

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

We shall be told that, in England, the king, lords, and commons, have this power; that armies can be raised by the prince alone, without the consent of the people. How does this apply here? Is this government to place us in the situation of the English? Should we suppose this government to resemble king, lords, and commons, we of this state

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should be like an English county. An English county cannot control the government. Virginia cannot control the government of Congress any more than the county of Kent can control that of England. Advert to the power thoroughly. One of our first complaints, under the former government, was the quartering of troops upon us. This was one of the principal reasons for dissolving the connection with Great Britain. Here we may have troops in time of peace. They may be billeted in any manner — to tyrannize, oppress, and crush us.

We are told, we are afraid to trust ourselves; that our own representatives — Congress — will not exercise their powers oppressively; that we shall not enslave ourselves; that the militia cannot enslave themselves, &c. Who has enslaved France, Spain, Germany, Turkey, and other countries which groan under tyranny? They have been enslaved by the hands of their own people. If it will be so in America, it will be only as it has been every where else. I am still persuaded that the power of calling forth the militia, to execute the laws of the Union, &c., is dangerous. We requested the gentleman to show the cases where the militia would be wanting to execute the laws. Have we received a satisfactory answer? When we consider this part, and compare it to other parts, which declare that Congress may declare war, and that the President shall command the regular troops, militia, and navy, we shall find great danger. Under the order of Congress, they shall suppress insurrections. Under the order of Congress, they shall be called to execute the laws. It will result, of course, that this is to be a government of force. Look at the part which speaks of excises, and you will recollect that those who are to collect excises and duties are to be aided by military force. They have power to call them out, and to provide for arming, organizing, disciplining, them. Consequently, they are to make militia laws for this state.

The honorable gentleman said that the militia should be called forth to quell riots. Have we not seen this business go on very well to-day without military force? It is a long-established principle of the common law of England, that civil force is sufficient to quell riots. To what length may it not be carried? A law may be made that, if twelve men assemble, if they do not disperse, they may be fired upon

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I think it is so in England. Does not this part of the paper bear a strong aspect? The honorable gentleman, from his knowledge, was called upon to show the instances, and he told us the militia may be called out to quell riots. They may make the militia travel, and act under a colonel, or perhaps under a constable. Who are to determine whether it be a riot or not? Those who are to execute the laws of the Union? If they have power to execute their laws in this manner, in what situation are we placed! Your men who go to Congress are not restrained by a bill of rights. They are not restrained from inflicting unusual and severe punishments, though the bill of rights of Virginia forbids it. What will be the consequence? They may inflict the most cruel and ignominious punishments on the militia, and they will tell you that it is necessary for their discipline.

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

Mr. MADISON. Mr. Chairman, I will endeavor to follow the rule of the house, but must pay due attention to the observations which fell from the gentleman. I should conclude, from abstracted reasoning, that they were ill founded. I should think that, if there were any object which the general government ought to command, it would be the direction of the national forces. And as the force which lies in militia is most safe, the direction of that part ought to be

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submitted to, in order to render another force unnecessary. The power objected to is necessary, because it is to be employed for national purposes. It is necessary to be given to every government. This is not opinion, but fact. The highest authority may be given, that the want of such authority in the government protracted the late war, and prolonged its calamities.

He says that one ground of complaint, at the beginning of the revolution, was, that a standing army was quartered upon us. This was not the whole complaint. We complained because it was done without the local authority of this country — without the consent of the people of America. As to the exclusion of standing armies in the bill of rights of the states, we shall find that though, in one or two of them, there is something like a prohibition, yet, in most of them, it is only provided that no armies shall be kept without the legislative authority; that is, without the consent of the community itself. Where is the impropriety of saying that we shall have an army, if necessary? Does not the notoriety of this constitute security? If inimical nations were to fall upon us when defenceless, what would be the consequence? Would it be wise to say, that we should have no defence? Give me leave to say, that the only possible way to provide against standing armies is to make them unnecessary.

The way to do this is to organize and discipline our militia, so as to render them capable of defending the country against external invasions and internal insurrections. But it is urged that abuses may happen. How is it possible to answer objections against the possibility of abuses? It must strike every logical reasoner, that these cannot be entirely provided against. I really thought that the objection in the militia was at an end. Was there ever a constitution, in which if authority was vested, it must not have been executed by force, if resisted? Was it not in the contemplation of this state, when contemptuous proceedings were expected, to recur to something of this kind? How is it possible to have a more proper resource than this? That the laws of every country ought to be executed, cannot be denied. That force must be used if necessary, cannot be denied. Can any government be established, that will answer any purpose whatever, unless force be provided for executing its

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laws? The Constitution does not say that a standing army shall be called out to execute the laws. Is not this a more proper way? The militia ought to be called forth to suppress smugglers. Will this be denied? The case actually happened at Alexandria. There were a number of smugglers, who were too formidable for the civil power to overcome. The military quelled the sailors, who otherwise would have perpetrated their intentions. Should a number of smugglers have a number of ships, the militia ought to be called forth to quell them. We do not know but what there may be a combination of smugglers in Virginia hereafter. We all know the use made of the Isle of Man. It was a general depository of contraband goods. The Parliament found the evil so great, as to render it necessary to wrest it out of the hands of its possessor.

The honorable gentleman says that it is a government of force. If he means military force, the clause under consideration proves the contrary. There never was a government without force. What is the meaning of government? An institution to make people do their duty. A government leaving it to a man to do his duty or not, as he pleases, would be a new species of government, or rather no government at all. The ingenuity of the gentleman is remarkable in introducing the riot act of Great Britain. That act has no connection, or analogy, to any regulation of the militia; nor is there any thing in the Constitution to warrant the general government to make such an act. It never was a complaint, in Great Britain, that the militia could be called forth. If riots should happen, the militia are proper to quell it, to prevent a resort to another mode. As to the infliction of ignominious punishments, we have no ground of alarm, if we consider the circumstances of the people at large. There will be no punishments so ignominious as have been inflicted already. The militia law of every state to the north of Maryland is less rigorous than the particular law of this state. If a change be necessary to be made by the general government, it will be in our favor. I think that the people of those states would not agree to be subjected to a more harsh punishment than their own militia laws inflict. An observation fell from a gentleman, on the same side with myself, which deserves to be attended to. If we be dissatisfied with the national government, if we should choose to re-

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nounce it, this is an additional safeguard to our defence. I conceive that we are peculiarly interested in giving the general government as extensive means as possible to protect us. If there be a particular discrimination between places in America, the Southern States are, from their situation and circumstances, most interested in giving the national government the power of protecting its members.

[Here Mr. Madison made some other observations, but spoke so very low, that his meaning could not be comprehended.]

An act passed, a few years ago, in this state, to enable the government to call forth the militia to enforce the laws when a powerful combination should take place to oppose them. This is the same power which the Constitution is to have. There is a great deal of difference between calling forth the militia, when a combination is formed to prevent the execution of the laws, and the sheriff or constable carrying with him a body of militia to execute them in the first instance; which is a construction not warranted by the clause. There is an act, also, in this state, empowering the officers of the customs to summon any persons to assist them when they meet with obstruction in executing their duty. This shows the necessity of giving the government power to call forth the militia when the laws are resisted. It is a power vested in every legislature in the Union, and which is necessary to every government. He then moved that the clerk should read those acts — which were accordingly read.

Mr. GEORGE MASON asked to what purpose the laws were read. The objection was, that too much power was given to Congress — power that would finally destroy the state governments more effectually by insidious, underhanded means, than such as could be openly practised. This, said he, is the opinion of many worthy men, not only in this Convention, but in all parts of America. These laws could only show that the legislature of this state could pass such acts. He thought they militated against the cession of this power to Congress, because the state governments could call forth the militia when necessary, so as to compel a submission to the laws; and as they were competent to it, Congress ought not to have the power. The meeting of three or four persons might be called an insurrection, and the militia might be called out to disperse them. He was not satisfied with

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the explanation of the word *organization* by the gentleman in the military line, (Mr. Lee.)

He thought they were not confined to the technical explanation, but that Congress could inflict severe and ignominious punishments on the militia, as a necessary incident to the power of organizing and disciplining them. The gentleman had said there was no danger, because the laws respecting the militia were less rigid in the other states than this. This was no conclusive argument. His fears, as he had before expressed, were, that grievous punishments would be inflicted, in order to render the service disagreeable to the militia themselves, and induce them to wish its abolition, which would afford a pretence for establishing a standing army. He was convinced the state governments ought to have the control of the militia, except when they were absolutely necessary for general purposes. The gentleman had said that they would be only subject to martial law when in actual service. He demanded what was to hinder Congress from inflicting it always, and making a general law for the purpose. If so, said he, it must finally produce, most infallibly, the annihilation of the state governments. These were his apprehensions; but he prayed God they might be groundless.

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

Mr. HENRY wished to know what authority the state governments had over the militia.

Mr. MADISON answered, that the state governments might do what they thought proper with the militia, when they were not in the actual service of the United States. They might make use of them to suppress insurrections, quell riots, &c., and call on the general government for the militia of any other state, to aid them, if necessary.

Mr. HENRY replied that, as the clause expressly vested the general government with power to call them out to sup

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press insurrections, &c., it appeared to him, most decidedly, that the power of suppressing insurrections was *exclusively* given to Congress. If it remained in the states, it was by implication.

Mr. CORBIN, after a short address to the chair, in which he expressed extreme reluctance to get up, said, that all contentions on this subject might be ended, by adverting to the 4th section of the 4th article, which provides, "that the United States shall guaranty to every state in the Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence." He thought this section gave the states power to use their own *militia*, and call on Congress for the militia of other states. He observed that our representatives were to return every second year to mingle with their fellow-citizens. He asked, then, how, in the name of God, they would make laws to destroy themselves. The gentleman had told us that nothing could be more humiliating than that the *state governments* could not control the general government. He thought the gentleman might as well have complained that one county could not control the state at large. Mr. Corbin then said that all confederate governments had the care of the national defence, and that Congress ought to have it. Animadverting on Mr. Henry's observations, that the French had been the instruments of their own slavery, that the Germans had enslaved the Germans, and the Spaniards the Spaniards, &c., he asked if those nations knew any thing of representation. The want of this knowledge was the principal cause of their bondage. He concluded by observing that the general government had no power but such as the state government had, and that arguments against the one held against the other.

Mr. GRAYSON, in reply to Mr. Corbin, said he was mistaken when he produced the 4th section of the 4th article, to prove that the state governments had a right to intermeddle with the militia. He was of opinion that a previous application must be made to the federal head, by the legislature when in session, or otherwise by the executive of any state, before they could interfere with the militia. In his opinion, no instance could be adduced where the states could employ the militia; for, in all the cases wherein they could be

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employed, Congress had the exclusive direction and control of them. Disputes, he observed, had happened in many countries, where this power should be lodged. In England, there was a dispute between the Parliament and King Charles who should have power over the militia. Were this government well organized, he would not object to giving it power over the militia. But as it appeared to him to be without checks, and to tend to the formation of an aristocratic body, he could not agree to it. Thus organized, his imagination did not reach so far as to know where this power should be lodged. He conceived the state governments to be at the mercy of the generality. He wished to be open to conviction, but he could see no case where the states could command the militia. He did not believe that it corresponded with the intentions of those who formed it, and it was altogether without an equilibrium. He humbly apprehended that the power of providing for organizing and disciplining the militia, enabled the government to make laws for regulating them, and inflicting punishments for disobedience, neglect, &c. Whether it would be the spirit of the generality to lay unusual punishments, he knew not; but he thought they had the power, if they thought proper to exercise it. He thought that, if there was a constructive implied power left in the states, yet, as the line was not clearly marked between the two governments, it would create differences. He complained of the uncertainty of the expression, and wished it to be so clearly expressed that the people might see where the states could interfere.

As the exclusive power of arming, organizing, &c., was given to Congress, they might entirely neglect them; or they might be armed in one part of the Union, and totally neglected in another. This he apprehended to be a probable circumstance. In this he might be thought suspicious; but he was justified by what had happened in other countries. He wished to know what attention had been paid to the militia of Scotland and Ireland since the union, and what laws had been made to regulate them. There is, says Mr. Grayson, an excellent militia law in England, and such as I wish to be established by the general government. They have thirty thousand select militia in England. But the militia of Scotland and Ireland are neglected. I see the necessity of the concentration of the forces of the Union.

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I acknowledge that militia are the best means of quelling insurrections, and that we have an advantage over the English government, for their regular forces answer the purpose. But I object to the want of checks, and a line of discrimination between the state governments and the generality.

Mr. JOHN MARSHALL asked if gentlemen were serious when they asserted that, if the state governments had power to interfere with the militia, it was by implication. If they were, he asked the committee whether the least attention would not show that they were mistaken. The state governments did not derive their powers from the general government; but each government derived its powers from the people, and each was to act according to the powers given it. Would any gentleman deny this? He demanded if powers not given were retained by implication. Could any man say so? Could any man say that this power was not retained by the states, as they had not given it away? For, says he, does not a power remain till it is given away? The state legislatures had power to command and govern their militia before, and have it still, undeniably, unless there be something in this Constitution that takes it away.

For Continental purposes Congress may call forth the militia, — as to suppress insurrections and repel invasions. But the power given to the states by the people is not taken away; for the Constitution does not say so. In the Confederation Congress had this power; but the state legislatures had it also. The power of legislating given them within the ten miles square is exclusive of the states, because it is expressed to be exclusive. The truth is, that when power is given to the general legislature, if it was in the state legislature before, both shall exercise it; unless there be an incompatibility in the exercise by one to that by the other, or negative words precluding the state governments from it. But there are no negative words here. It rests, therefore, with the states. To me it appears, then, unquestionable that the state governments can call forth the militia, in case the Constitution should be adopted, in the same manner as they could have done before its adoption. Gentlemen have said that the states cannot defend themselves without an application to Congress, because Congress can interpose! Does not every man feel a refutation of the argument in his own breast? I will show

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that there could not be a combination, between those who formed the Constitution, to take away this power. All the restraints intended to be laid on the state governments (besides where an exclusive power is expressly given to Congress) are contained in the 10th section of the 1st article. This power is not included in the restrictions in that section. But what excludes every possibility of doubt, is the last part of it — that "no state shall engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." When invaded, they can engage in war, as also when in imminent danger. This clearly proves that the states can use the militia when they find it necessary. The worthy member last up objects to the Continental government's possessing the power of disciplining the militia, because, though all its branches be derived from the people, he says they will form an aristocratic government, unsafe and unfit to be trusted.

Mr. GRAYSON answered, that he only said it was so constructed as to form a great aristocratic body.

Mr. MARSHALL replied, that he was not certain whether he understood him; but he thought he had said so. He conceived that, as the government was drawn from the people, the feelings and interests of the people would be attended to, and that we should be safe in granting them power to regulate the militia. When the government is drawn from the people, continued Mr. Marshall, and depending on the people for its continuance, oppressive measures will not be attempted, as they will certainly draw on their authors the resentment of those on whom they depend. On this government, thus depending on ourselves for its existence, I will rest my safety, notwithstanding the danger depicted by the honorable gentleman. I cannot help being surprised that the worthy member thought this power so dangerous. What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence, and withholding this power from Congress, will be, that state will fall after state, and be a sacrifice to the want of power in the general government. *United we are strong, divided we fall.* Will you prevent the general government from drawing the militia of one state to another, when the consequence would be, that every state must depend on itself? The enemy, possessing

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the water, can quickly go from one state to another. No state will spare to another its militia, which it conceives necessary for itself. It requires a superintending power, in order to call forth the resources of all to protect all. If this be not done, each state will fall a sacrifice. This system merits the highest applause in this respect. The honorable gentleman said that a general regulation may be made to inflict punishments. Does he imagine that a militia law is to be ingrafted on the scheme of government, so as to render it incapable of being changed? The idea of the worthy member supposes that men renounce their own interests. This would produce general inconveniences throughout the Union, and would be equally opposed by all the states. But the worthy member fears, that in one part of the Union they will be regulated and disciplined, and in another neglected. This danger is enhanced by leaving this power to each state; for some states may attend to their militia, and others may neglect them. If Congress neglect our militia we can arm them ourselves. Cannot Virginia import arms? Cannot she put them into the hands of her militia-men?

He then concluded by observing, that the power of governing the militia was not vested in the states by implication, because, being possessed of it antecedent to the adoption of the government, and not being divested of it by any grant or restriction in the Constitution, they must necessarily be as fully possessed of it as ever they had been. And it could not be said that the states derived any powers from that system, but retained them, though not acknowledged in any part of it.

Mr. GRAYSON acknowledged that all power was drawn from the people. But he could see none of those checks which ought to characterize a free government. It had not such checks as even the British government had. He thought it so organized as to form an aristocratic body. If we looked at the democratic branch, and the great extent of country, he said, it must be considered, in a great degree, to be an aristocratic representation. As they were elected with craving appetites, and wishing for emoluments, they might unite with the other two branches. They might give reciprocally good offices to one another, and mutually protect each other; for he considered them all as united in interest, and as but one branch. There was no check to prevent such

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a combination; nor, in cases of concurrent powers, was there a line drawn to prevent interference between the state governments and the generality.

Mr. HENRY still retained his opinion, that the states had no right to call forth the militia to suppress insurrections, &c. But the right interpretation (and such as the nations of the earth had put upon the concession of power) was that, when power was given, it was given exclusively. He appealed to the committee, if power was not confined in the hands of a *few* in almost all countries of the world. He referred to their candor, if the construction of conceded power was not an exclusive concession, in nineteen twentieth parts of the world. The nations which retained their liberty were comparatively few. America would add to the number of the oppressed nations, if she depended on constructive rights and argumentative implication. That the powers given to Congress were exclusively given, was very obvious to him. The rights which the states had must be founded on the restrictions on Congress. He asked, if the doctrine which had been so often circulated, that rights not given were retained, was true, why there were negative clauses to restrain Congress. He told gentlemen that these clauses were sufficient to shake all their implication; for, says he, if Congress had no power but that given to them, why restrict them by negative words? Is not the clear implication this — that, if these restrictions were not inserted, they could have performed what they prohibit?

The worthy member had said that Congress ought to have power to protect all, and had given this system the highest encomium. But he insisted that the power over the militia was concurrent. To obviate the futility of this doctrine, Mr. Henry alleged that it was not reducible to practice. Examine it, says he; reduce it to practice. Suppose an insurrection in Virginia, and suppose there be danger apprehended of an insurrection in another state, from the exercise of the government; or suppose a national war, and there be discontents among the people of this state, that produce, or threaten, an insurrection; suppose Congress, in either case, demands a number of militia, — will they not be obliged to go? Where are your reserved rights, when your militia go to a neighboring state? Which call is to be obeyed, the congressional call, or the call of the state legislature? The call of Congress must be obeyed. I need not remind this

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committee that the sweeping clause will cause their demands to be submitted to. This clause enables them "to make all laws which shall be necessary and proper to carry into execution all the powers vested by this Constitution in the government of the United States, or in any department or officer thereof." Mr. Chairman, I will turn to another clause which relates to the same subject, and tends to show the fallacy of their argument.

The 10th section of the 1st article, to which reference was made by the worthy member, militates against himself. It says, that "no state shall engage in war, unless actually invaded." If you give this clause a fair construction, what is the true meaning of it? What does this relate to? Not domestic insurrections, but war. If the country be invaded, a state may go to war, but cannot suppress insurrections. If there should happen an insurrection of slaves, the country cannot be said to be invaded. They cannot, therefore, suppress it without the interposition of Congress. The 4th section of the 4th article expressly directs that, in case of domestic violence, Congress shall protect the states on application of the legislature or executive; and the 8th section of the 1st article gives Congress power to call forth the militia to quell insurrections: there cannot, therefore, be a concurrent power. The state legislatures ought to have power to call forth the efforts of the militia, when necessary. Occasions for calling them out may be urgent, pressing, and instantaneous. The states cannot now call them, let an insurrection be ever so perilous, without an application to Congress. So long a delay may be fatal.

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

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ing this clear, unequivocal relinquishment of the power of controlling the militia, you say the states retain it, for the very purposes given to Congress. Is it fair to say that you give the power of arming the militia, and at the same time to say you reserve it? This great national government ought not to be left in this condition. If it be, it will terminate in the destruction of our liberties.

Mr. MADISON. Mr. Chairman, let me ask this committee, and the honorable member last up, what we are to understand from this reasoning. The power must be vested in Congress, or in the state governments; or there must be a division or concurrence. He is against division. It is a political monster. He will not give it to Congress for fear of oppression. Is it to be vested in the state governments? If so, where is the provision for general defence? If ever America should be attacked, the states would fall successively. It will prevent them from giving aid to their sister states; for, as each state will expect to be attacked, and wish to guard against it, each will retain its own militia for its own defence. Where is this power to be deposited, then, unless in the general government, if it be dangerous to the public safety to give it exclusively to the states? If it must be divided, let him show a better manner of doing it than that which is in the Constitution. I cannot agree with the other honorable gentleman, that there is no check. There is a powerful check in that paper. The state governments are to govern the militia when not called forth for general national purposes; and Congress is to govern such part only as may be in the actual service of the Union. Nothing can be more certain and positive than this. It expressly empowers Congress to govern them when in the service of the United States. It is, then, clear that the states govern them when they are not. With respect to suppressing insurrections, I say that those clauses which were mentioned by the honorable gentleman are compatible with a concurrence of the power. By the first, Congress is to call them forth to suppress insurrections, and repel invasions of foreign powers. A concurrence in the former case is necessary, because a whole state may be in insurrection against the Union. What has passed may perhaps justify this apprehension. The safety of the Union and particular states requires that the general government should have power to

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repel foreign invasions. The 4th section of the 4th article is perfectly consistent with the exercise of the power by the states. The words are, "The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence." The word *invasion* here, after power had been given in the former clause to repel invasions, may be thought tautologous, but it has a different meaning from the other. This clause speaks of a particular state. It means that it shall be protected from invasion by other states. A republican government is to be guarantied to each state, and they are to be protected from invasion from other states, as well as from foreign powers; and, on application by the legislature or executive, as the case may be, the militia of the other states are to be called to suppress domestic insurrections. Does this bar the states from calling forth their own militia? No; but it gives them a supplementary security to suppress insurrections and domestic violence.

The other clause runs in these words: "No state shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." They are restrained from making war, unless invaded, or *in imminent danger*. When in such danger, they are not restrained. I can perceive no competition in these clauses. They cannot be said to be repugnant to a concurrence of the power. If we object to the Constitution in this manner, and consume our time in verbal criticism, we shall never put an end to the business.

Mr. GEORGE MASON. Mr. Chairman, a worthy member has asked who are the militia, if they be not the *people* of this country, and if we are not to be protected from the fate of the Germans, Prussians, &c., by our representation? I ask, Who are the militia? They consist now of the whole people, except a few public officers. But I cannot say who will be the militia of the future day. If that paper on the table gets no alteration, the militia of the future day may not consist of all classes, high and low, and

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rich and poor; but they may be confined to the lower and middle classes of the people, granting exclusion to the higher classes of the people. If we should ever see that day, the most ignominious punishments and heavy fines may be expected. Under the present government, all ranks of people are subject to militia duty. Under such a full and equal representation as ours, there can be no ignominious punishment inflicted. But under this national, or rather consolidated government, the case will be different. The representation being so small and inadequate, they will have no fellow-feeling for the people. They may discriminate people in their own predicament, and exempt from duty all the officers and lowest creatures of the national government. If there were a more particular definition of their powers, and a clause exempting the militia from martial law except when in actual service, and from fines and punishments of an unusual nature, then we might expect that the militia would be what they are. But, if this be not the case, we cannot say how long all classes of people will be included in the militia. There will not be the same reason to expect it, because the government will be administered by different people. We know what they are now, but know not how soon they may be altered.

Mr. GEORGE NICHOLAS. Mr. Chairman, I feel apprehensions lest the subject of our debates should be misunderstood. Every one wishes to know the true meaning of the system; but I fear those who hear us will think we are captiously quibbling on words. We have been told, in the course of this business, that the government will operate like a *screw*. Give me leave to say that the exertions of the opposition are like that instrument. They catch at every thing, and take it into their vortex. The worthy member says that this government is defective, because it comes from the people. Its greatest recommendation, with me, is putting the power in the hands of the people. He disapproves of it because it does not say in what particular instances the militia shall be called out to execute the laws. This is a power of the Constitution, and particular instances must be defined by the legislature. But, says the worthy member, those laws which have been read are arguments against the Constitution, because they show that the states are now in possession of the power, and competent to its execution

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Would you leave this power in the states, and by that means deprive the general government of a power which will be necessary for its existence? If the state governments find this power necessary, ought not the general government to have a similar power? But, sir, there is no state check in this business. The gentleman near me has shown that there is a very important check.

Another worthy member says there is no power in the states to quell an insurrection of slaves. Have they it now? If they have, does the Constitution take it away? If it does, it must be in one of the three clauses which have been mentioned by the worthy member. The first clause gives the general government power to call them out when necessary. Does this take it away from the states? No. But it gives an additional security; for, besides the power in the state governments to use their own militia, it will be the duty of the general government to aid them with the strength of the Union when called for. No part of this Constitution can show that this power is taken away.

But an argument is drawn from that clause which says "that no state shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay." What does this prohibition amount to? It must be a war with a foreign enemy that the states are prohibited from making; for the exception to the restriction proves it. The restriction includes only offensive hostility, as they are at liberty to engage in war when invaded, or in imminent danger. They are, therefore, not restrained from quelling domestic insurrections, which are totally different from making war with a foreign power. But the great thing to be dreaded is that, during an insurrection, the militia will be called out from the state. This is his kind of argument. Is it possible that, at such a time, the general government would order the militia to be called? It is a groundless objection, to work on gentlemen's apprehensions within these walls. As to the 4th article, it was introduced wholly for the particular aid of the states. A republican form of government is guarantied, and protection is secured against invasion and domestic violence on application. Is not this a guard as strong as possible? Does it not exclude the unnecessary interference of Congress in business of this sort?

The gentleman over the way cannot tell who will be the

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militia at a future day, and enumerates dangers of select militia. Let me attend to the nature of gentlemen's objections. One objects because there will be select militia; another objects because there will be no select militia; and yet both oppose it on these contradictory principles. If you deny the general government the power of calling out the militia, there must be a recurrence to a standing army. If you are really jealous of your liberties, confide in Congress.

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

Mr. NICHOLAS wished to know whether the representatives of the people would consent to such exemptions, as every man who had twenty-five acres of land could vote for a federal representative.

Mr. GRAYSON. Mr. Chairman, I conceive that the power of providing and maintaining a navy is at present dangerous, however warmly it may be urged by gentlemen that America ought to become a maritime power. If we once give such power, we put it in the hands of men whose interest it will be to oppress us. It will also irritate the nations of Europe against us. Let us consider the situation of the maritime powers of Europe: they are separated from us by the Atlantic Ocean. The riches of all those countries come by sea. Commerce and navigation are the principal sources of their wealth. If we become a maritime power, we shall be able to participate in their most beneficial business. Will they suffer us to put ourselves in a condition to rival them? I believe the first step of any consequence, which will be made towards it, will bring war upon us. Their ambition and avarice most powerfully impel them to prevent our becoming a naval nation. We should, on this occasion, consult our ability. Is there any gentleman here who can say that America can support a navy? The riches of America are not sufficient to bear the enormous expense it must certainly occasion. I may be supposed to exagger-

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ate, but I leave it to the committee to judge whether my information be right or not.

It is said that shipwrights can be had on better terms in America than in Europe; but necessary materials are so much dearer in America than in Europe, that the aggregate sum would be greater. A seventy-four gun ship will cost you ninety-eight thousand pounds, including guns, tackle, &c. According to the usual calculation in England, it will cost you the further sum of forty-eight thousand pounds to man it, furnish provisions, and pay officers and men. You must pay men more here than in Europe, because, their governments being arbitrary, they can command the services of their subjects without an adequate compensation; so that, in all, the expenses of such a vessel would be one hundred and forty thousand pounds in one year. Let gentlemen consider, then, the extreme difficulty of supporting a navy, and they will concur with me, that America cannot do it. I have no objection to such a navy as will not excite the jealousy of the European countries. But I would have the Constitution to say, that no greater number of ships should be had than would be sufficient to protect our trade. Such a fleet would not, probably, offend the Europeans. I am not of a jealous disposition; but when I consider that the welfare and happiness of my country are in danger, I beg to be excused for expressing my apprehensions. Let us consider how this navy shall be raised. What would be the consequence under those general words, "to provide and maintain a navy"? All the vessels of the intended fleet would be built and equipped in the Northern States, where they have every necessary material and convenience for the purpose. Will any gentleman say that any ship of war can be raised to the south of Cape Charles? The consequence will be that the Southern States will be in the power of the Northern States.

We should be called upon for our share of the expenses, without having equal emoluments. Can it be supposed, when this question comes to be agitated in Congress, that the Northern States will not take such measures as will throw as much circulating money among them as possible, without any consideration as to the other states? If I know the nature of man, (and I believe I do,) they will have no consideration for us. But, supposing it were not so, America

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

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

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

Adverting to the clause investing Congress with the power of exclusive legislation in a district not exceeding ten miles square, he said he had before expressed his doubts that this

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district would be the favorite of the generality, and that it would be possible for them to give exclusive privileges of commerce to those residing within it. He had illustrated what he said by European examples. It might be said to be impracticable to exercise this power in this manner. Among the various laws and customs which pervaded Europe, there were exclusive privileges and immunities enjoyed in many places. He thought that this ought to be guarded against; for should such exclusive privileges be granted to merchants residing within the ten miles square, it would be highly injurious to the inhabitants of other places.

Mr. GEORGE MASON thought that there were few clauses in the Constitution so dangerous as that which gave Congress exclusive power of legislation within ten miles square. Implication, he observed, was capable of any extension, and would probably be extended to augment the congressional powers. But here there was no need of implication. This clause gave them an unlimited authority, in every possible case, within that district. This ten miles square, says Mr. Mason, may set at defiance the laws of the surrounding states, and may, like the custom of the superstitious days of our ancestors, become the sanctuary of the blackest crimes. Here the federal courts are to sit. We have heard a good deal said of justice.

It has been doubted whether jury trial be secured in civil cases. But I will suppose that we shall have juries in civil cases. What sort of a jury shall we have within the ten miles square? The immediate creatures of the government. What chance will poor men get, where Congress have the power of legislating in all cases whatever, and where judges and juries may be under their influence, and bound to support their operations? Even with juries the chance of justice may here be very small, as Congress have unlimited authority, legislative, executive, and judicial. Lest this power should not be sufficient, they have it in every case. Now, sir, if an attempt should be made to establish tyranny over the people, here are ten miles square where the greatest offender may meet protection. If any of their officers, or creatures, should attempt to oppress the people, or should actually perpetrate the blackest deed, he has nothing to do but get into the ten miles square. Why was this dangerous power given? Felons may receive an asylum there and in

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their strongholds. Gentlemen have said that it was dangerous to argue against possible abuse, because there could be no power delegated but might be abused. It is an incontrovertible axiom, that, when the dangers that may arise from the *abuse* are greater than the benefits that may result from the use, the power ought to be withheld. I do not conceive that this power is at all necessary, though capable of being greatly abused.

We are told by the honorable gentleman that Holland has its Hague. I confess I am at a loss to know what inference he could draw from that observation. This is the place where the deputies of the United Provinces meet to transact the public business. But I do not recollect that they have any exclusive jurisdiction whatever in that place, but are subject to the laws of the province in which the Hague is. To what purpose the gentleman mentioned that Holland has its Hague, I cannot see.

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

Mr. MADISON. Mr. Chairman: I did conceive, sir, that the clause under consideration was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask whether there would not be much larger scope for those dangers. I cannot comprehend that the power of legislating over a small district, which cannot exceed ten miles square, and may not be more than one mile, will involve the dangers which he apprehends. If there be any knowledge in my mind of the nature of man, I should think it would be the last thing that would enter into the mind of any man to grant exclusive advantages, in a very circumscribed district, to the prejudice of the community at large. We make suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But, after all, bring home this question to ourselves. Is it probable that the members from Georgia, New Hampshire, &c., will concur to sacrifice the privileges of their friends? I believe that, whatever state may become the seat of the gen-

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eral government, it will become the object of the jealousy and envy of the other states. Let me remark, if not already remarked, that there must be a cession, by particular states, of the district to Congress, and that the states may settle the terms of the cession. The states may make what stipulation they please in it, and, if they apprehend any danger, they may refuse it altogether. How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power? If it were at the pleasure of a particular state to control the session and deliberations of Congress, would they be secure from insults, or the influence of such state? If this commonwealth depended, for the freedom of deliberation, on the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to Congress? With respect to the government of Holland, I believe the States General have no jurisdiction over the Hague; but I have heard that mentioned as a circumstance which gave undue influence to Holland over the rest. We must limit our apprehensions to certain degrees of probability. The evils which they urge must result from this clause are extremely improbable; nay, almost impossible.

Mr. GRAYSON. Mr. Chairman, one answer which has been given is, the improbability of the evil — that it will never be attempted, and that it is almost impossible. This will not satisfy us, when we consider the great attachments men have to a great and magnificent capital. It would be the interest of the citizens of that district to aggrandize themselves by every possible means in their power, to the great injury of the other states. If we travel all over the world, we shall find that people have aggrandized their own capitals. Look at Russia and Prussia. Every step has been taken to aggrandize their capitals. In what light are we to consider the ten miles square? It is not to be a fourteenth state. The inhabitants will in no respect whatever be amenable to the laws of any state. A clause in the 4th article, highly extolled for its wisdom, will be rendered nugatory by this exclusive legislation. This clause runs thus: "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such

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service or labor, but shall be delivered up on the claim of the party to whom such labor or service may be due." Unless you consider the ten miles square as a state, persons bound to labor, who shall escape thither, will not be given up; for they are only to be delivered up after they shall have escaped into a state. As my honorable friend mentioned, felons, who shall have fled from justice to the ten miles square, cannot be apprehended. The executive of a state is to apply to that of another for the delivery of a felon. He cannot apply to the ten miles square. It was often in contemplation of Congress to have power of regulating the police of the seat of government; but they never had an idea of exclusive legislation in all cases. The power of regulating the police and good government of it will secure Congress against insults. What originated the idea of the exclusive legislation was, some insurrection in Pennsylvania, whereby Congress was insulted, — on account of which, it is supposed, they left the state.

It is answered that the consent of the state must be required, or else they cannot have such a district, or places for the erecting of forts, &c. But how much is already given them! Look at the great country to the north-west of the Ohio, extending to and commanding the lakes.

Look at the other end of the Ohio, towards South Carolina, extending to the Mississippi. See what these, in process of time, may amount to. They may grant exclusive privileges to any particular part of which they have the possession. But it may be observed that those extensive countries will be formed into independent states, and that their consent will be necessary. To this I answer, that they may still grant such privileges as, in that country, are already granted to Congress by the states. The grants of Virginia, South Carolina, and other states, will be subservient to Congress in this respect. Of course, it results from the whole, that requiring the consent of the states will be no guard against this abuse of power.

[A desultory conversation ensued.]

Mr. NICHOLAS insisted that as the state, within which the ten miles square might be, could prescribe the terms on which Congress should hold it, no danger could arise, as no state would consent to injure itself: there was the same

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security with respect to the places purchased for the erection of forts, magazines, &c.; and as to the territory of the United States, the power of Congress only extended to make needful rules and regulations concerning it, without prejudicing the claim of any particular state, the right of territory not being given up; that the grant of those lands to the United States was for the general benefit of all the states, and not to be perverted to their prejudice; that, consequently, whether that country were formed into new states or not, the danger apprehended could not take place; that the seat of government was to be still a part of the state, and, as to general regulations, was to be considered as such.

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

Mr. LEE strongly expatiated on the impossibility of securing any human institution from possible abuse. He thought the powers conceded in the paper on the table not so liable to be abused as the powers of the state governments. Gentlemen had suggested that the seat of government would become a sanctuary for state villains, and that, in a short time, ten miles square would subjugate a country of eight hundred miles square. This appeared to him a most improbable possibility; nay, he might call it impossibility. Were the place crowded with rogues, he asked if it would be an agreeable place of residence for the members of the general government, who were freely chosen by the people and the state governments. Would the people be so lost to honor and virtue, as to select men who would willingly

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associate with the most abandoned characters? He thought the honorable gentleman's objections against remote possibility of abuse went to prove that government of no sort was eligible, but that a state of nature was preferable to a state of civilization. He apprehended no danger; and thought that persons bound to labor, and felons, could not take refuge in the ten miles square, or other places exclusively governed by Congress, because it would be contrary to the Constitution, and a palpable usurpation, to protect them.

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

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ers, without any real responsibility? Will you be safe when you trust men at Philadelphia with power to make any law that will enable them to carry their acts into execution? Will not the members of Congress have the same passions which other rulers have had? They will not be superior to the frailties of human nature. However cautious you may be in the selection of your representatives, it will be dangerous to trust them with such unbounded powers. Shall we be told, when about to grant such illimitable authority, that it will never be exercised!

I conjure you once more to remember the admonition of that sage man who told you that, when you give power, you know not what you give. I know the absolute necessity of an energetic government. But is it consistent with any principle of prudence or good policy to grant unlimited, unbounded authority, which is so totally unnecessary that gentlemen say it will never be exercised? But gentlemen say that we must make experiments. A wonderful and unheard-of experiment it will be, to give unlimited power unnecessarily! I admit my inferiority in point of historical knowledge; but I believe no man can produce an instance of an unnecessary and unlimited power, given to a body independent of the legislature, within a particular district. Let any man in this Convention show me an instance of such separate and different powers of legislation in the same country — show me an instance where a part of the community was independent of the whole.

The people within that place, and the strongholds, may be excused from all the burdens imposed on the rest of the society, and may enjoy exclusive emoluments, to the great injury of the rest of the people. But gentlemen say that the power will not be abused. They ought to show that it is necessary. All their powers may be fully carried into execution, without this exclusive authority in the ten miles square. The sweeping clause will fully enable them to do what they please. What could the most extravagant and boundless imagination ask, but power to do every thing? I have reason to suspect ambitious grasps at power. The experience of the world teaches me the jeopardy of giving enormous power. Strike this clause out of the form of the government, and how will it stand? Congress will still have power, by the sweeping clause, to make laws within that

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place and the strongholds, independently of the local authority of the state. I ask you, if this clause be struck out, whether the sweeping clause will not enable them to protect themselves from insult. If you grant them these powers, you destroy every degree of responsibility. They will fully screen them from justice, and preclude the possibility of punishing them. No instance can be given of such a wanton grasp of power as an exclusive legislation in all cases whatever.

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

The honorable member asks, Why ask for this power, and if the subsequent clause be not fully competent for the same purpose. If so, what new terrors can arise from this particular clause? It is only a superfluity. If that latitude of construction which he contends for were to take place with respect to the sweeping clause, there would be room for those horrors. But it gives no supplementary power. It only enables them to execute the delegated powers. If the delegation of their powers be safe, no possible inconvenience can arise from this clause. It is at most but explanatory. For when any power is given, its delegation necessarily involves authority to make laws to execute it. Were it possible to delineate on paper all those particular cases and circumstances in which legislation by the general legislature would be necessary, and leave to the states all the other powers, I imagine no gentleman would object to it. But this is not within the limits of human capacity. The particular powers which are found necessary to be given

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are therefore delegated generally, and particular and minute specification is left to the legislature.

[Here Mr. Madison spoke of the distinction between regulation of police and legislation, but so low he could not be heard.]

When the honorable member objects to giving the general government jurisdiction over the place of their session, does he mean that it should be under the control of any particular state, that might, at a critical moment, seize it? I should have thought that this clause would have met with the most cordial approbation. As the consent of the state in which it may be must be obtained, and as it may stipulate the terms of the grant, should they violate the particular stipulations it would be an usurpation; so that, if the members of Congress were to be guided by the laws of their country, none of those dangers could arise.

[Mr. Madison made several other remarks, which could not be heard.]

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

Mr. PENDLETON. Mr. Chairman, this clause does not give Congress power to impede the operation of any part of the Constitution, or to make any regulation that may affect the interests of the citizens of the Union at large. But it gives them power over the local police of the place, so as to be secured from any interruption in their proceedings. Notwithstanding the violent attack upon it, I believe, sir, this is the fair construction of the clause. It gives them power of exclusive legislation in any case within that district. What is the meaning of this? What is it opposed to? Is it opposed to the general powers of the federal legislature, or to those of the state legislatures? I understand it as opposed to the legislative power of that state where it shall be. What, then, is the power? It is, that Congress shall exclusively legislate there, in order to pre

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serve the police of the place and their own personal independence, that they may not be overawed or insulted, and of course to preserve them in opposition to any attempt by the state where it shall be. This is the fair construction. Can we suppose that, in order to effect these salutary ends, Congress will make it an asylum for villains and the vilest characters from all parts of the world? Will it not degrade their own dignity to make it a sanctuary for villains? I hope that no man that will ever compose that Congress will associate with the most profligate characters.

Why oppose this power? Suppose it was contrary to the sense of their constituents to grant exclusive privileges to citizens residing within that place; the effect would be directly in opposition to what he says. It could have no operation without the limits of that district. Were Congress to make a law granting them an exclusive privilege of trading to the East Indies, it could have no effect the moment it would go without that place; for their exclusive power is confined to that district. Were they to pass such a law, it would be nugatory; and every member of the community at large could trade to the East Indies as well as the citizens of that district. This exclusive power is limited to that place solely, for their own preservation, which all gentlemen allow to be necessary.

Will you pardon me when I observe that their construction of the preceding clause does not appear to me to be natural, or warranted by the words.

They say that the state governments have no power at all over the militia. The power of the general government to provide for arming and organizing the militia is to introduce a uniform system of discipline to pervade the United States of America. But the power of *governing* the militia, so far as it is in Congress, extends only to such parts of them as may be employed in the service of the United States. When not in their service, Congress has no power to govern them. The states then have the sole government of them; and though Congress *may* provide for arming them, and prescribe the mode of discipline, yet the states have the authority of training them, according to the uniform discipline prescribed by Congress. But there is nothing to preclude them from arming and disciplining them, should Congress neglect to do it. As to calling the militia to execute the laws of the

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Union, I think the fair construction is directly opposite to what the honorable member says. The 4th section of the 4th article contains nothing to warrant the supposition that the states cannot call them forth to suppress domestic insurrections. [*Here he read the section.*] All the restraint here contained is, that Congress may, at their pleasure, on application of the state legislature, or (in vacation) of the executive, protect each of the states against domestic violence. This is a restraint on the general government not to interpose. The state is in full possession of the power of using its own militia to protect itself against domestic violence; and the power in the general government cannot be exercised, or interposed, without the application of the state itself. This appears to me to be the obvious and fair construction.

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

Mr. GEORGE MASON. Mr. Chairman, gentlemen say there is no new power given by this clause. Is there any thing in this Constitution which secures to the states the powers which are said to be retained? Will powers remain to the states which are not expressly guarded and reserved? I will suppose a case. Gentlemen may call it an impossible case, and suppose that Congress will act with wisdom and integrity. Among the enumerated powers, Congress are to lay and collect taxes, duties, imposts, and excises, and to pay the debts, and to provide for the general welfare and common defence; and by that clause (so often called the *sweeping clause*) they are to make all laws necessary to execute those laws. Now, suppose oppressions

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should arise under this government, and any writer should dare to stand forth, and expose to the community at large the abuses of those powers; could not Congress, under the idea of providing for the general welfare, and under their own construction, say that this was destroying the general peace, encouraging sedition, and poisoning the minds of the people? And could they not, in order to provide against this, lay a dangerous restriction on the press? Might they not even bring the trial of this restriction within the ten miles square, when there is no prohibition against it? Might they not thus destroy the trial by jury? Would they not extend their implication? It appears to me that they may and will. And shall the support of our rights depend on the bounty of men whose interest it may be to oppress us? That Congress should have power to provide for the general welfare of the Union, I grant. But I wish a clause in the Constitution, with respect to all powers which are not granted, that they are retained by the states. Otherwise, the power of providing for the general welfare may be perverted to its destruction.

Many gentlemen, whom I respect, take different sides of this question. We wish this amendment to be introduced, to remove our apprehensions. There was a clause in the Confederation reserving to the states respectively every power, jurisdiction, and right, not expressly delegated to the United States. This clause has never been complained of, but approved by all. Why not, then, have a similar clause in this Constitution, in which it is the more indispensably necessary than in the Confederation, because of the great augmentation of power vested in the former? In my humble apprehension, unless there be some such clear and finite expression, this clause now under consideration will go to any thing our rulers may think proper. Unless there be some express declaration that every thing not given is retained, it will be carried to any power Congress may please.

Mr. HENRY moved to read from the 8th to the 13th article of the declaration of rights; which was done.

Mr. GEORGE NICHOLAS, in reply to the gentlemen opposed to the clause under debate, went over the same grounds, and developed the same principles, which Mr. Pendleton and Mr. Madison had done. The opposers of the

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

He then proceeded thus: But, says he, who is to determine the extent of such powers? I say, the same power which, in all well-regulated communities, determines the extent of legislative powers. If they exceed these powers, the judiciary will declare it void, or else the people will have a right to declare it void. Is this depending on any man? But, says the gentleman, it may go to any thing. It may destroy the trial by jury; and they may say it is necessary for providing for the general defence. The power of providing for the general defence only extends to raise any sum of money they may think necessary, by taxes, imposts, &c. But, says he, our only defence against oppressive laws consists in the virtue of our representatives. This was misrepresented. If I understand it right, no new power can be exercised. As to those which are actually granted, we trust to the fellow-feelings of our representatives; and if we are deceived, we then trust to altering our

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government. It appears to me, however, that we can confide in their discharging their powers rightly, from the peculiarity of their situation, and connection with us. If, sir, the powers of the former Congress were very inconsiderable, that body did not deserve to have great powers.

It was so constructed that it would be dangerous to invest it with such. But why were the articles of the bill of rights read? Let him show us that those rights are given up by the Constitution. Let him prove them to be violated. He tells us that the most worthy characters of the country differ as to the necessity of a bill of rights. It is a simple and plain proposition. It is agreed upon by all that the people have all power. If they part with any of it, is it necessary to declare that they retain the rest? Liken it to any similar case. If I have one thousand acres of land, and I grant five hundred acres of it, must I declare that I retain the other five hundred? Do I grant the whole thousand acres, when I grant five hundred, unless I declare that the five hundred I do not give belong to me still? It is so in this case. After granting some powers, the rest must remain with the people.

Gov. RANDOLPH observed that he had some objections to the clause. He was persuaded that the construction put upon it by the gentlemen, on both sides, was erroneous; but he thought any construction better than going into anarchy.

Mr. GEORGE MASON still thought that there ought to be some express declaration in the Constitution, asserting that rights not given to the general government were retained by the states. He apprehended that, unless this was done, many valuable and important rights would be concluded to be given up by implication. All governments were drawn from the people, though many were perverted to their oppression. The government of Virginia, he remarked, was drawn from the people; yet there were certain great and important rights, which the people, by their bill of rights, declared to be paramount to the power of the legislature. He asked, Why should it not be so in this Constitution? Was it because we were more substantially represented in it than in the state government? If, in the state government, where the people were substantially and fully represented, it was necessary that the great rights of human nature should

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be secure from the encroachments of the legislature, he asked if it was not more necessary in this government, where they were but inadequately represented? He declared that artful sophistry and evasions could not satisfy him. He could see no clear distinction between rights relinquished by a positive grant, and lost by implication. Unless there were a bill of rights, implication might swallow up all our rights.

Mr. HENRY. Mr. Chairman, the necessity of a bill of rights appears to me to be greater in this government than ever it was in any government before. I have observed already, that the sense of the European nations, and particularly Great Britain, is against the construction of rights being retained which are not expressly relinquished. I repeat, that all nations have adopted this construction — that all rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers. It is so in Great Britain; for every possible right, which is not reserved to the people by some express provision or compact, is within the king's prerogative. It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject. At the revolution, it must be admitted that it was their sense to set down those great rights which ought, in all countries, to be held inviolable and sacred. Virginia did so, we all remember. She made a compact to reserve, expressly, certain rights.

When fortified with full, adequate, and abundant representation, was she satisfied with that representation? No. She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of patriotic liberty, ever did, or ever can, abandon. She is called upon now to abandon them, and dissolve that compact which secured them to her. She is called upon to accede to another compact, which most infallibly supersedes and annihilates her present one. Will she do it? This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation; for, if implication be allowed, you are ousted of those rights. If the people do not think it necessary to

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reserve them, they will be supposed to be given up. How were the congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The states were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government.

Your own example furnishes an argument against it. If you give up these powers, without a bill of rights, you will exhibit the most absurd thing to mankind that ever the world saw — a government that has abandoned all its powers — the powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a bill of rights — without check, limitation, or control. And still you have checks and guards; still you keep barriers — pointed where? Pointed against your weakened, prostrated, enervated state government! You have a bill of rights to defend you against the state government, which is bereaved of all power, and yet you have none against Congress, though in full and exclusive possession of all power! You arm yourselves against the weak and defenceless, and expose yourselves naked to the armed and powerful. Is not this a conduct of unexampled absurdity? What barriers have you to oppose to this most strong, energetic government? To that government you have nothing to oppose. All your defence is given up. This is a real, actual defect. It must strike the mind of every gentleman. When our government was first instituted in Virginia, we declared the common law of England to be in force.

That system of law which has been admired, and has protected us and our ancestors, is excluded by that system. Added to this, we adopted a bill of rights. By this Constitution, some of the best barriers of human rights are thrown away. Is there not an additional reason to have a bill of rights? By the ancient common law, the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the common law in criminal cases; and in civil controversies

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excludes trial by jury altogether. There is, therefore, more occasion for the supplementary check of a bill of rights now than then. Congress, from their general powers, may fully go into business of human legislation. They may legislate, in criminal cases, from treason to the lowest offence — petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives. What says our bill of rights? — "that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Are you not, therefore, now calling on those gentlemen who are to compose Congress, to prescribe trials and define punishments without this control? Will they find sentiments there similar to this bill of rights? You let them loose; you do more — you depart from the genius of your country. That paper tells you that the trial of crimes shall be by jury, and held in the state where the crime shall have been committed. Under this extensive provision, they may proceed in a manner extremely dangerous to liberty: a person accused may be carried from one extremity of the state to another, and be tried, not by an impartial jury of the vicinage, acquainted with his character and the circumstances of the fact, but by a jury unacquainted with both, and who may be biased against him. Is not this sufficient to alarm men? How different is this from the immemorial practice of your British ancestors, and your own! I need not tell you that, by the common law, a number of hundredors were required on a jury, and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the common law in force.

In this business of legislation, your members of Congress will loose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments. These are prohibited by your declaration of rights. What has distinguished our ancestors? — That they would not admit of tortures, or cruel and barbarous punishment. But Congress may introduce the practice of the civil law, in preference to that of the common law. They may

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introduce the practice of France, Spain, and Germany — of torturing, to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great Britain, and they will tell you that there is such a necessity of strengthening the arm of government, that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone. And can any man think it troublesome, when we can, by a small interference, prevent our rights from being lost? If you will, like the Virginian government, give them knowledge of the extent of the rights retained by the people, and the powers of themselves, they will, if they be honest men, thank you for it. Will they not wish to go on sure grounds? But if you leave them otherwise, they will not know how to proceed; and, being in a state of uncertainty, they will assume rather than give up powers by implication.

A bill of rights may be summed up in a few words. What do they tell us? — That our rights are reserved. Why not say so? Is it because it will consume too much paper? Gentlemen's reasoning against a bill of rights does not satisfy me. Without saying which has the right side, it remains doubtful. A bill of rights is a favorite thing with the Virginians and the people of the other states likewise. It may be their prejudice, but the government ought to suit their geniuses; otherwise, its operation will be unhappy. A bill of rights, even if its necessity be doubtful, will exclude the possibility of dispute; and, with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of a fact, &c. There was certainly some celestial influence governing those who deliberated on that Constitution; for they have, with the most cautious and enlightened circumspection, guarded those indefeasible rights which ought ever to be held sacred! The officers of Congress may come upon you now, fortified with all the terrors of paramount federal authority. Excisemen may come in multitudes; for the limitation of their numbers no man knows. They may, unless the general government be restrained by a bill of rights, or some similar restriction, go into your cellars and rooms, and search, ransack, and

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

Mr. GRAYSON thought it questionable whether rights not given up were reserved. A majority of the states, he observed, had expressly reserved certain important rights by bills of rights, and that in the Confederation there was a clause declaring expressly that every power and right not given up was retained by the states. It was the general sense of America that such a clause was necessary; otherwise, why did they introduce a clause which was totally unnecessary? It had been insisted, he said, in many parts of America, that a bill of rights was only necessary between a prince and people, and not in such a government as this, which was a compact between the people themselves. This did not satisfy his mind; for so extensive was the power of legislation, in his estimation, that he doubted whether, when it was once given up, *any thing* was retained. He further remarked, that there were some negative clauses in the Constitution, which refuted the doctrine contended for by the other side. For instance; the 2d clause of the 9th section of the 1st article provided that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." And, by the last clause of the same section, "no title of nobility shall be granted by the United States." Now, if these restrictions had not been here inserted, he asked whether Congress would not most clearly have had a right to suspend that great and valuable right, and to grant titles of nobility. When, in addition to these considerations, he saw they had an indefinite power to provide for the general welfare, he thought there were great reasons to apprehend great dangers. He thought, therefore, that there ought to be a bill of rights.

Mr. GEORGE NICHOLAS, in answer to the two gen-

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tlemen last up, observed that, though there was a declaration of rights in the government of Virginia, it was no conclusive reason that there should be one in this Constitution; for, if it was unnecessary in the former, its omission in the latter could be no defect. They ought, therefore, to prove that it was essentially necessary to be inserted in the Constitution of Virginia. There were five or six states in the Union which had no bill of rights, separately and distinctly as such; but they annexed the substance of a bill of rights to their respective constitutions. These states, he further observed, were as free as this state, and their liberties as secure as ours. If so, gentlemen's arguments from the precedent were not good. In Virginia, all powers were given to the government without any exception. It was different in the general government, to which certain special powers were delegated for certain purposes. He asked which was the more safe. Was it safer to grant general powers than certain limited powers? This much as to the theory, continued he. What is the practice of this invaluable government? Have your citizens been bound by it? They have not, sir. You have violated that maxim, "that no man shall be condemned without a fair trial." That man who was killed, not *secundum artem*, was deprived of his life without the benefit of law, and in express violation of this declaration of rights, which they confide in so much. But, sir, this bill of rights was no security. It is but a paper check. It has been violated in many other instances. Therefore, from theory and practice, it may be concluded that this government, with special powers, without any express exceptions, is better than a government with general powers and special exceptions. But the practice of England is against us. The rights there reserved to the people are to limit and check the king's prerogative. It is easier to enumerate the exceptions to his prerogative, than to mention all the cases to which it extends. Besides, these reservations, being only formed in acts of the legislature, may be altered by the representatives of the people when they think proper. No comparison can be made of this with the other governments he mentioned. There is no stipulation between the king and people. The former is possessed of absolute, unlimited authority.

But, sir, this Constitution is defective because the common

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law is not declared to be in force! What would have been the consequence if it had? It would be immutable. But now it can be changed or modified as the legislative body may find necessary for the community. But the common law is not excluded. There is nothing in that paper to warrant the assertion. As to the exclusion of a jury from the vicinage, he has mistaken the fact. The legislature may direct a jury to come from the vicinage. But the gentleman says that, by this Constitution, they have power to make laws to define crimes and prescribe punishments; and that, consequently, we are not free from torture. Treason against the United States is defined in the Constitution, and the forfeiture limited to the life of the person attainted. Congress have power to define and punish piracies and felonies committed on the high seas, and offences against the laws of nations; but they cannot define or prescribe the punishment of any other crime whatever, without violating the Constitution. If we had no security against torture but our declaration of rights, we might be tortured to-morrow; for it has been repeatedly infringed and disregarded. A bill of rights is only an acknowledgment of the preëxisting claim to rights in the people. They belong to us as much as if they had been inserted in the Constitution. But it is said that, if it be doubtful, the possibility of dispute ought to be precluded. Admitting it was proper for the Convention to have inserted a bill of rights, it is not proper here to propose it as the condition of our accession to the Union. Would you reject this government for its omission, dissolve the Union, and bring miseries on yourselves and posterity? I hope the gentleman does not oppose it on this ground solely. Is there another reason? He said that it is not only the general wish of this state, but all the states, to have a bill of rights. If it be so, where is the difficulty of having this done by way of subsequent amendment? We shall find the other states willing to accord with their own favorite wish. The gentleman last up says that the power of legislation includes every thing. A general power of legislation does. But this is a special power of legislation. Therefore, it does not contain that plenitude of power which he imagines. They cannot legislate in any case but those particularly enumerated. No gentleman, who is a friend to the government, ought to withhold his assent from it for this reason.

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Mr. GEORGE MASON replied that the worthy gentleman was mistaken in his assertion that the bill of rights did not prohibit torture; for that one clause expressly provided that no man can give evidence against himself; and that the worthy gentleman must know that, in those countries where torture is used, evidence was extorted from the criminal himself. Another clause of the bill of rights provided that no cruel and unusual punishments shall be inflicted; therefore, torture was included in the prohibition.

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

TUESDAY, *June* 15, 1788.

Mr. GEORGE MASON. Mr. Chairman, this is a fatal section, which has created more dangers than any other. The first clause allows the importation of slaves for twenty years. Under the royal government, this evil was looked upon as a great oppression, and many attempts were made to prevent it; but the interest of the African merchants prevented its prohibition. No sooner did the revolution take place, than it was thought of. It was one of the great causes of our separation from Great Britain. Its exclusion has been a principal object of this state, and most of the states in the Union. The augmentation of slaves weakens the states; and such a trade is diabolical in itself, and disgraceful to mankind; yet, by this Constitution, it is continued for twenty years. As much as I value a union of all the states, I would not admit the Southern States into the Union unless they agree to the discontinuance of this disgraceful trade, because it would bring weakness, and not strength, to the Union. And, though this infamous traffic be continued, we have no security for the property of that kind which we have already. There is no clause in this Constitution to secure it; for they may lay such a tax as will amount to manumission. And should the government be amended, still this detestable kind of commerce cannot be discontinued till after the expiration of twenty years; for the 5th article.

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which provides for amendments, expressly excepts this clause I have ever looked upon this as a most disgraceful thing to America. I cannot express my detestation of it. Yet they have not secured us the property of the slaves we have already. So that "they have done what they ought not to have done, and have left undone what they ought to have done."

Mr. MADISON. Mr. Chairman, I should conceive this clause to be impolitic, if it were one of those things which could be excluded without encountering greater evils. The Southern States would not have entered into the Union of America without the temporary permission of that trade; and if they were excluded from the Union, the consequences might be dreadful to them and to us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The Union in general is not in a worse situation. Under the Articles of Confederation, it might be continued forever; but, by this clause, an end may be put to it after twenty years. There is, therefore, an amelioration of our circumstances. A tax may be laid in the mean time; but it is limited; otherwise Congress might lay such a tax as would amount to a prohibition. From the mode of representation and taxation, Congress cannot lay such a tax on slaves as will amount to manumission. Another clause secures us that property which we now possess. At present, if any slave elopes to any of those states where slaves are free, he becomes emancipated by their laws; for the laws of the states are uncharitable to one another in this respect. But in this Constitution, "no person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor shall be due." This clause was expressly inserted, to enable owners of slaves to reclaim them.

This is a better security than any that now exists. No power is given to the general government to interpose with respect to the property in slaves now held by the states. The taxation of this state being equal only to its representation, such a tax cannot be laid as he supposes. They cannot prevent the importation of slaves for twenty years; but after that period, they can. The gentlemen from South Carolina and

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Georgia argued in this manner: "We have now liberty to import this species of property, and much of the property now possessed had been purchased, or otherwise acquired, in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us from it? The slaves of Virginia would rise in value, and we should be obliged to go to your markets. I need not expatiate on this subject. Great as the evil is, a dismemberment of the Union would be worse. If those states should disunite from the other states for not indulging them in the temporary continuance of this traffic, they might solicit and obtain aid from foreign powers.

Mr. TYLER warmly enlarged on the impolicy, iniquity, and disgracefulness of this wicked traffic. He thought the reasons urged by gentlemen in defence of it were inconclusive and ill founded. It was one cause of the complaints against British tyranny, that this trade was permitted. The revolution had put a period to it; but now it was to be revived. He thought nothing could justify it. This temporary restriction on Congress militated, in his opinion, against the arguments of gentlemen on the other side, that what was not given up was retained by the states; for that, if this restriction had not been inserted, Congress could have prohibited the African trade. The power of prohibiting it was not expressly delegated to them; yet they would have had it by implication, if this restraint had not been provided. This seemed to him to demonstrate most clearly the necessity of restraining them, by a bill of rights, from infringing our unalienable rights. It was immaterial whether the bill of rights was by itself, or included in the Constitution. But he contended for it one way or the other. It would be justified by our own example and that of England. His earnest desire was, that it should be handed down to posterity that he had opposed this wicked clause. He then adverted to the clauses which enabled Congress to legislate exclusively in the ten miles square, and other places purchased for forts, magazines, &c., to provide for the general welfare, to raise a standing army, and to make any law that may be necessary to carry their laws into execution. From the combined operation of these unlimited powers he dreaded the most fatal consequences. If any acts of violence should be committed on persons or property, the perpetrators of such acts might

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take refuge in the sanctuary of the ten miles square and the strongholds. They would thus escape with impunity, as the states had no power to punish them. He called to the recollection of the committee the history of the Athenian who, from small beginnings, had enslaved his country. He begged them to remember that Cæsar, who prostrated the liberties of his country, did not possess a powerful army at first. Suppose, says he, that the time should come that a king should be proposed by Congress. Will they not be able, by the sweeping clause, to call in foreign assistance, and raise troops, and do whatever they think proper to carry this proposition into effect? He then concluded that, unless this clause were expunged, he would vote against the Constitution.

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

Mr. HENRY insisted that the insertion of these restrictions on Congress was a plain demonstration that Congress could exercise powers by implication. The gentleman had admitted that Congress could have interdicted the African trade, were it not for this restriction. If so, the power, not having been expressly delegated, must be obtained by implication. He demanded where, then, was their doctrine of reserved rights. He wished for negative clauses to prevent them from assuming any powers but those expressly given. He asked why it was omitted to secure us that property in slaves which we held now. He feared its omission was done with design. They might lay such heavy taxes on slaves as would amount to emancipation; and then the Southern States would be the only sufferers. His opinion was confirmed by the mode of levying money. Congress, ne

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observed, had power to lay and collect taxes, imposts, and excises. Imposts (or duties) and excises were to be uniform; but this uniformity did not extend to taxes. This might compel the Southern States to liberate their negroes. He wished this property, therefore, to be guarded. He considered the clause, which had been adduced by the gentleman as a security for this property, as no security at all. It was no more than this — that a runaway negro could be taken up in Maryland or New York. This could not prevent Congress from interfering with that property by laying a grievous and enormous tax on it, so as to compel owners to emancipate their slaves rather than pay the tax. He apprehended it would be productive of much stock-jobbing, and that they would play into one another's hands in such a manner as that this property would be lost to the country.

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

As the Southern States would not confederate without this clause, he asked if gentlemen would rather dissolve the confederacy than to suffer this temporary inconvenience, admitting it to be such. Virginia might continue the prohibition of such importation during the intermediate period, and would be benefited by it, as a tax of ten dollars on each slave might be laid, of which she would receive a share. He endeavored to obviate the objection of gentlemen, that the restriction on Congress was a proof that they would have powers not given them, by remarking, that they would only have had a general superintendency of trade, if the restriction had not been inserted. But the Southern States insisted on this exception to that general superintendency for twenty years. It could not, therefore, have been a power

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

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

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

[The 2d, 3d, and 4th clauses were then read.]

Mr. GEORGE MASON said, that gentlemen might think themselves secured by the restriction, in the 4th clause, that

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no capitation or other direct tax should be laid but in proportion to the census before directed to be taken; but that, when maturely considered, it would be found to be no security whatsoever. It was nothing but a direct assertion, or mere confirmation of the clause which fixed the ratio of taxes and representation. It only meant that the quantum to be raised of each state should be in proportion to their numbers, in the manner therein directed. But the general government was not precluded from laying the proportion of any particular state on any one species of property they might think proper.

For instance, if five hundred thousand dollars were to be raised, they might lay the whole of the proportion of the Southern States on the blacks, or any one species of property; so that, by laying taxes too heavily on slaves, they might totally annihilate that kind of property. No real security could arise from the clause which provides that persons held to labor in one state, escaping into another, shall be delivered up. This only meant that runaway slaves should not be protected in other states. As to the exclusion of *ex post facto* laws, it could not be said to create any security in this case; for laying a tax on slaves would not be *ex post facto*.

Mr. MADISON replied, that even the Southern States, which were most affected, were perfectly satisfied with this provision, and dreaded no danger to the property they now hold. It appeared to him that the general government would not intermeddle with that property for twenty years, but to lay a tax on every slave imported not exceeding ten dollars; and that, after the expiration of that period, they might prohibit the traffic altogether. The census in the Constitution was intended to introduce equality in the burdens to be laid on the community. No gentleman objected to laying duties, imposts, and excises, uniformly. But uniformity of taxes would be subversive of the principles of equality; for it was not possible to select any article which would be easy for one state but what would be heavy for another; that, the proportion of each state being ascertained, it would be raised by the general government in the most convenient manner for the people, and not by the selection of any one particular object; that there must be some degree of confidence put in agents, or else we must reject a state of civil society

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altogether. Another great security to this property, which he mentioned, was, that five states were greatly interested in that species of property, and there were other states which had some slaves, and had made no attempt, or taken any step, to take them from the people. There were a few slaves in New York, New Jersey, and Connecticut: these states would, probably, oppose any attempts to annihilate this species of property. He concluded by observing that he should be glad to leave the decision of this to the committee.

[The 5th and 6th clauses were then read.]

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

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

Mr. MASON begged to be permitted to use that mode of arguing to which he had been accustomed. However desirous he was of pleasing that worthy gentleman, his duty would not give way to that pleasure.

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Mr. GEORGE NICHOLAS said it was a better direction and security than was in the state government. No appropriation shall be made of the public money but by law. There could not be any misapplication of it. Therefore, he thought, instead of censure it merited applause; being a cautious provision, which few constitutions, or none, had ever adopted.

Mr. CORBIN concurred in the sentiments of Mr. Nicholas on this subject.

Mr. MADISON thought it much better than if it had mentioned any specified period; because, if the accounts of the public receipts and expenditures were to be published at short, stated periods, they would not be so full and connected as would be necessary for a thorough comprehension of them, and detection of any errors. But by giving them an opportunity of publishing them from time to time, as might be found easy and convenient, they would be more full and satisfactory to the public, and would be sufficiently frequent. He thought, after all, that this provision went farther than the constitution of any state in the Union, or perhaps in the world.

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

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

[The 7th clause was then read.]

Mr. HENRY. Mr. Chairman, we have now come to the 9th section, and I consider myself at liberty to take a short view of the whole. I wish to do it very briefly. Give me leave to remark that there is a bill of rights in that government

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There are express restrictions, which are in the shape of a bill of rights; but they bear the name of the 9th section. The design of the negative expressions in this section is to prescribe limits beyond which the powers of Congress shall not go. These are the sole bounds intended by the American government. Whereabouts do we stand with respect to a bill of rights? Examine it, and compare it to the idea manifested by the Virginian bill of rights, or that of the other states. The restraints in this congressional bill of rights are so feeble and few, that it would have been infinitely better to have said nothing about it. The fair implication is, that they can do every thing they are not forbidden to do. What will be the result if Congress, in the course of their legislation, should do a thing not restrained by this 9th section? It will fall as an incidental power to Congress, not being prohibited expressly in the Constitution. The first prohibition is, that the privilege of the writ of *habeas corpus* shall not be suspended but when, in case of rebellion or invasion, the public safety may require it. It results clearly that, if it had not said so, they could suspend it in all cases whatsoever. It reverses the position of the friends of this Constitution, that every thing is retained which is not given up; for, instead of this, every thing is given up which is not expressly reserved. It does not speak affirmatively, and say that it shall be suspended in those cases; but that it shall not be suspended but in certain cases; going on a supposition that every thing which is not negatived shall remain with Congress. If the power remains with the people, how can Congress supply the want of an affirmative grant? They cannot do it but by implication, which destroys their doctrine. The Virginia bill of rights interdicts the relinquishment of the sword and purse without control. That bill of rights secures the great and principal rights of mankind. But this bill of rights extends to but very few cases, and is destructive of the doctrine advanced by the friends of that paper.

If *ex post facto* laws had not been interdicted, they might also have been extended by implication at pleasure. Let us consider whether this restriction be founded in wisdom or good policy. If no *ex post facto* laws be made, what is to become of the old Continental paper dollars? Will not this country be forced to pay in gold and silver, shilling for shilling? Gentlemen may think that this does not deserve

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an answer. But it is an all-important question, because the property of this country is not commensurate to the enormous demand. Our own government triumphs, with infinite superiority, when put in contrast with that paper. The want of a bill of rights will render all their laws, however oppressive, constitutional.

If the government of Virginia passes a law in contradiction to our bill of rights, it is nugatory. By that paper the national wealth is to be disposed of under the veil of secrecy; for the publication from time to time will amount to nothing, and they may conceal what they may think requires secrecy. How different it is in your own government! Have not the people seen the journals of our legislature every day during every session? Is not the *lobby* full of people every day? Yet gentlemen say that the publication from time to time is a security unknown in our state government! Such a regulation would be nugatory and vain, or at least needless, as the people see the journals of our legislature, and hear their debates, every day. If this be not more secure than what is in that paper, I will give up that I have totally misconceived the principles of the government. You are told that your rights are secured in this new government. They are guarded in no other part but this 9th section. The few restrictions in that section are your only safeguards. They may control your actions, and your very words, without being repugnant to that paper. The existence of your dearest privileges will depend on the consent of Congress, for they are not within the restrictions of the 9th section.

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

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Gov. RANDOLPH. Mr. Chairman, the general review which the gentleman has taken of the 9th section is so inconsistent, that, in order to answer him, I must, with your permission, who are the *custos* of order here, depart from the rule of the house in some degree. I declared, some days ago, that I would give my suffrage for this Constitution, not because I considered it without blemish, but because the critical situation of our country demanded it. I invite those who think with me to vote for the Constitution. But where things occur in it which I disapprove of, I shall be candid in exposing my objections.

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

Let us take an example of a single department; for instance, that of the President, who has certain things annexed to his office. Does it not reasonably follow that he must have some incidental powers? The principle of inci-

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dental powers extends to all parts of the system. If you then say that the President has incidental powers, you reduce it to tautology. I cannot conceive that the fair interpretation of these words is as the honorable member says.

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

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

The 3d restriction is, that no bill of attainder, or *ex*

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

The 4th restriction is, that no capitation, or other direct tax, shall be laid, unless in proportion to the census before directed to be taken. Our debates show from what power this is an exception.

The restrictions in the 5th clause are an exception to the power of regulating commerce.

The restriction in the 6th clause, that no money should be drawn from the treasury but in consequence of appropriations made by law, is an exception to the power of paying the debts of the United States; for the power of drawing money from the treasury is consequential of that of paying the public debts.

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

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

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confidence, and diminished that mutual friendship, which contributed to carry us through the war.

The honorable gentlemen observe that Congress might define punishments, from petty larceny to high treason. This is an unfortunate quotation for the gentleman, because treason is expressly defined in the 3d section of the 3d article, and they can add no feature to it. They have not cognizance over any other crime except piracies, felonies committed on the high seas, and offences against the law of nations.

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

On the subject of a bill of rights, the want of which has been complained of, I will observe that it has been sanctified by such reverend authority, that I feel some difficulty in going against it. I shall not, however, be deterred from giving my opinion on this occasion, let the consequence be what it may. At the beginning of the war, we had no certain bill of rights; for our charter cannot be considered as a bill of rights; it is nothing more than an investiture, in the hands of the Virginia citizens, of those rights which belonged to British subjects. When the British thought proper to infringe our rights, was it not necessary to mention, in our Constitution, those rights which ought to be paramount to the power of the legislature? Why is the bill of rights distinct from the Constitution? I consider bills of rights in this view — that the government should use them, when there is a departure from its fundamental principles, in order to restore them.

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This is the true sense of a bill of rights. If it be consistent with the Constitution, or contain additional rights, why not put it in the Constitution? If it be repugnant to the Constitution, here will be a perpetual scene of warfare between them. The honorable gentleman has praised the bill of rights of Virginia, and called it his guardian angel, and vilified this Constitution for not having it. Give me leave to make a distinction between the representatives of the people of a particular country, who are appointed as the ordinary legislature, having no limitation to their powers, and another body arising from a compact, and with certain delineated powers. Were a bill of rights necessary in the former, it would not be in the latter; for the best security that can be in the latter is the express enumeration of its powers. But let me ask the gentleman where his favorite rights are violated. They are not violated by the 10th section, which contains restrictions on the states. Are they violated by the enumerated powers? [Here his excellency read from the 8th to the 12th article of the bill of rights.] Is there not provision made, in this Constitution, for the trial by jury in criminal cases? Does not the 3d article provide that the trial of all crimes shall be by jury, and held where the said crimes shall have been committed? Does it not follow that the cause and nature of the accusation must be produced? — because, otherwise, they cannot proceed on the cause. Every one knows that the witnesses must be brought before the jury, or else the prisoner will be discharged. Calling of evidence in his favor is coincident to his trial. There is no suspicion that less than twelve jurors will be thought sufficient. The only defect is, that there is no speedy trial. Consider how this could have been amended. We have heard complaints against it because it is supposed the jury is to come from the state at large. It will be in their power to have juries from the vicinage. And would not the complaints have been louder if they had appointed a federal court to be had in every county in the state? Criminals are brought, in this state, from every part of the country to the general court, and jurors from the vicinage are summoned to the trials. There can be no reason to prevent the general government from adopting a similar regulation.

As to the exclusion of excessive bail and fines, and cruel

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

That general warrants are grievous and oppressive, and ought not to be granted, I fully admit. I heartily concur in expressing my detestation of them. But we have sufficient security here also. We do not rely on the integrity of any one particular person or body, but on the number and different orders of the members of the government — some of them having necessarily the same feelings with ourselves. Can it be believed that the federal judiciary would not be independent enough to prevent such oppressive practices? If they will not do justice to persons injured, may they not go to our own state judiciaries, and obtain it?

Gentlemen have been misled, to a certain degree, by a general declaration that the trial by jury was gone. We see that, in the most valuable cases, it is reserved. Is it abolished in civil cases? Let him put his finger on the part where it is abolished. The Constitution is silent on it. What expression would you wish the Constitution to use, to establish it? Remember we were not making a constitution for Virginia alone, or we might have taken Virginia for our directory. But we were forming a constitution for thirteen states. The trial by jury is different in different states. In some states it is excluded in cases in which it is admitted in others. In admiralty causes it is not used. Would you have a jury to determine the case of a capture?

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The Virginia legislature thought proper to make an exception of that case. These depend on the law of nations, and no twelve men that could be picked up could be equal to the decision of such a matter.

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

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

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

But he objects that the common law is not established by the Constitution. The wisdom of the Convention is displayed by its omission, because the common law ought not to be immutably fixed. Is it established in our own Constitution, or the bill of rights, which has been resounded through the house? It is established only by an act of the legislature, and can therefore be changed as circumstances may require it. Let the honorable gentleman consider what would be the destructive consequences of its establishment in the Constitution. Even in England, where the firmest opposition has been made to encroachments upon it, it has been frequently changed. What would have been our dilemma if it had been established? Virginia has declared that children shall have equal portions of the real estate of their intestate parents, and it is consistent with the principles of a republican government.

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The immutable establishment of the common law would have been repugnant to that regulation. It would, in many respects, be destructive to republican principles, and productive of great inconveniences. I might indulge myself by showing many parts of the common law which would have this effect. I hope I shall not be thought to speak ludicrously, when I say the *writ of burning heretics* would have been revived by it. It would tend to throw real property into few hands, and prevent the introduction of many salutary regulations. Thus, were the common law adopted in that system, it would destroy the principles of republican government. But this is not excluded. It may be established by an act of legislature. Its defective parts may be altered, and it may be changed and modified as the convenience of the public may require it.

I said, when I opened my observations, that I thought the friends of the Constitution were mistaken when they supposed the powers granted by the last clause of the 8th section to be merely incidental; and that its enemies were equally mistaken when they put such an extravagant construction upon it.

My objection is, that the clause is ambiguous, and that that ambiguity may injure the states. My fear is, that it will, by gradual accessions, gather to a dangerous length. This is my apprehension, and I disdain to disown it. I will praise it where it deserves it, and censure it where it appears defective. But, sir, are we to reject it, because it is ambiguous in some particular instances? I cast my eyes to the actual situation of America. I see the dreadful tempest, to which the present calm is a prelude, if disunion takes place. I see the anarchy which must happen if no energetic government be established. In this situation, I would take the Constitution, were it more objectionable than it is; for, if anarchy and confusion follow disunion, an enterprising man may enter into the American throne. I conceive there is no danger. The representatives are chosen by and from among the people. They will have a fellow-feeling for the farmers and planters. The twenty-six senators, representatives of the states, will not be those desperadoes and horrid adventurers which they are represented to be. The state legislatures, I trust, will not forget the duty they owe to their country so far as to choose such men to manage their federal

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interests. I trust that the members of Congress themselves will explain the ambiguous parts; and if not, the states can combine in order to insist on amending the ambiguities. I would depend on the present actual feeling of the people of America, to introduce any amendment which may be necessary. I repeat it again, though I do not reverence the Constitution, that its adoption is necessary to avoid the storm which is hanging over America, and that no greater curse can befall her than the dissolution of the political connection between the states. Whether we shall propose previous or subsequent amendments, is now the only dispute. It is supererogation to repeat again the arguments in support of each; but I ask gentlemen whether, as eight states have adopted it, it be not safer to adopt it, and rely on the probability of obtaining amendments, than, by a rejection, to hazard a breach of the Union? I hope to be excused for the breach of order which I have committed.

Mr. HENRY lamented that he could not see with that perspicuity which other gentlemen were blessed with. But the 9th section struck his mind still in an unfavorable light. He hoped, as the gentleman had been indulged in speaking of the Constitution in general, that he should be allowed to answer him before they adopted or rejected it.

[The 1st clause of the 10th section was next read.]

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

Mr. MADISON admitted there might be some speculations on the subject. He believed the old Continental money was settled in a very disproportionate manner. It

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appeared to him, however, that it was unnecessary to say any thing on this point, for there was a clause in the Constitution which cleared it up. The first clause of the 6th article provides that "all debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation." He affirmed that it was meant there should be no change with respect to claims by this political alteration; and that the public would stand, with respect to their creditors, as before. He thought that the validity of claims ought not to diminish by the adoption of the Constitution. But, however, it could not increase the demands on the public.

Mr. GEORGE MASON declared he had been informed that some states had speculated most enormously in this matter. Many individuals had speculated so as to make great fortunes on the ruin of their fellow-citizens. The clause which has been read, as a sufficient security, seemed to him to be satisfactory as far as it went; that is, that the Continental money ought to stand on the same ground as it did previously, or that the claim should not be impaired. Under the Confederation, there were means of settling the old paper money, either in Congress or in the state legislatures. The money had at last depreciated to a thousand for one. The intention of state speculation, as well as individual speculation, was to get as much as possible of that money, in order to recover its nominal value. The means, says he, of settling this money, were in the hands of the old Congress. They could discharge it at its depreciated value. Is there that means here? No, sir, we must pay it shilling for shilling, or at least at the rate of one for forty. The amount will surpass the value of the property of the United States. Neither the state legislatures nor Congress can make an *ex post facto* law. The nominal value must therefore be paid. Where is the power in the new government to settle this money so as to prevent the country from being ruined? When they prohibit the making *ex post facto* laws, they will have no authority to prevent our being ruined by paying that money at its nominal value.

Without some security against it, we shall be compelled to pay it to the last particle of our property. Shall we ruin our people by taxation, from generation to generation, to pay

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that money? Should any *ex post facto* law be made to relieve us from such payments, it would not be regarded, because *ex post facto* laws are interdicted in the Constitution. We may be taxed for centuries, to give advantage to a few particular states in the Union, and a number of rapacious speculators. If there be any real security against this misfortune, let gentlemen show it. I can see none. The clause under consideration does away the pretended security in the clause which was adduced by the honorable gentleman. This enormous mass of worthless money, which has been offered at a thousand for one, must be paid in actual gold and silver at the nominal value.

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

Mr. HENRY. Mr. Chairman, I am convinced, and I see clearly, that this paper money must be discharged, shilling for shilling. The honorable gentleman must see better

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than I can, from his particular situation and judgment; but this has certainly escaped his attention. The question arising on the clause before you is, whether an act of the legislature of this state, for scaling money, will be of sufficient validity to exonerate you from paying the nominal value, when such a law, called *ex post facto*, and impairing the obligation of contracts, is expressly interdicted by it. Your hands are tied up by this clause, and you must pay shilling for shilling; and, in the last section, there is a clause that prohibits the general legislature from passing any *ex post facto* law; so that the hands of Congress are tied up, as well as the hands of the state legislatures.

How will this thing operate, when ten or twenty millions are demanded as the quota of this state? You will cry out that speculators have got it at one for a thousand, and that they ought to be paid so. Will you then have recourse, for relief, to legislative interference? They cannot relieve you, because of that clause. The expression includes public contracts, as well as private contracts between individuals. Notwithstanding the sagacity of the gentleman, he cannot prove its exclusive relation to private contracts. Here is an enormous demand, which your children, to the tenth generation, will not be able to pay. Should we ask if there be any obligation in justice to pay more than the depreciated value, we shall be told that contracts must not be impaired. Justice may make a demand of millions, but the people cannot pay them.

I remember the clamors and public uneasiness concerning the payments of British debts put into the treasury. Was not the alarm great and general lest these payments should be laid on the people at large? Did not the legislature interfere, and pass a law to prevent it? Was it not reechoed every where, that the people of this country ought not to pay the debts of their great ones? And though some urged their patriotism and merits in putting money, on the faith of the public, into the treasury, yet the outcry was so great that it required legislative interference. Should those enormous demands be made upon us, would not legislative interference be more necessary than it was in that case? Let us not run the risk of being charged with carelessness, and neglect of the interests of our constituents and posterity. I would ask the number of millions. It is, without exaggeration,

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immense. I ask gentlemen if they can pay one hundred millions, or two hundred millions? Where have they the means of paying it? Still they would make us proceed to tie the hands of the states and of Congress.

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

This state may be sued in the federal court for those enormous demands, and judgment may be obtained, unless *ex post facto* laws be passed. To benefit whom are we to run this risk? I have heard there were vast quantities of that money packed up in barrels: those formidable millions are deposited in the Northern States, and whether in public or private hands makes no odds. They have acquired it for the most inconsiderable trifle. If you accord to this part, you are bound hand and foot. Judgment must be rendered against you for the whole. Throw all pride out of the question, this is a most nefarious business. Your property will be taken from you to satisfy this most infamous speculation. It will destroy your public peace, and establish the ruin of your citizens Only general resistance will remedy. You will shut the door against every ray of hope, if you allow the holders of this money, by this clause, to recover their formidable demands. I hope gentlemen will see the absolute necessity

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of amending it, by enabling the state legislatures to relieve their people from such nefarious oppressions.

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

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

We are told of the act passed to exonerate the public from the payments of the British debts put into the treasury. That has no analogy to this: those payments were opposed because they were unjust. But he supposes that Congress may be sued by those speculators. Where is the clause that

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gives that power? It gives no such power. This, according to my idea, is inconsistent. Can the supreme legislature be sued in their own subordinate courts, by their own citizens, in cases where they are not a party? They may be plaintiffs, but not defendants. But the individual states, perhaps, may be sued. Pennsylvania or Virginia may be sued. How is this? Do I owe the man in New England any thing? Does Virginia owe any thing to the Pennsylvanian holder of such money? Who promised to pay it? Congress, sir. Congress are answerable to the individual holders of this money, and individuals are answerable over to Congress. Therefore, no individual can call on any state.

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

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

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

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

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

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cluded that he would, if necessary, display his feelings more fully on the subject another time.

Mr. GEORGE MASON. Mr. Chairman, the debt is transferred to Congress, but not the means of paying it. They cannot pay it any other way than according to the nominal value; for they are prohibited from making *ex post facto* laws; and it would be *ex post facto*, to all intents and purposes, to pay off creditors with less than the nominal sum which they were originally promised. But the honorable gentleman has called to his aid technical definitions. He says, that *ex post facto* laws relate solely to criminal matters. I beg leave to differ from him. Whatever it may be at the bar, or in a professional line, I conceive that, according to the common acceptation of the words, *ex post facto* laws and retrospective laws are synonymous terms. Are we to trust business of this sort to technical definition? The contrary is the plain meaning of the words. Congress has no power to scale this money. The states are equally precluded. The debt is transferred without the means of discharging it. Implication will not do. The means of paying it are expressly withheld. When this matter comes before the federal judiciary, they must determine according to this Constitution. It says, expressly, that they shall not make *ex post facto* laws. Whatever may be the professional meaning, yet the general meaning of *ex post facto* law is an act having a retrospective operation. This construction is agreeable to its primary etymology. Will it not be the duty of the federal court to say that such laws are prohibited? This goes to the destruction and annihilation of all the citizens of the United States, to enrich a few. Are we to part with every shilling of our property, and be reduced to the lowest insignificancy, to aggrandize a few speculators? Let me mention a remarkable effect this Constitution will have. How stood our taxes before this Constitution was introduced? Requisitions were made on the state legislatures, and, if they were unjust, they could be refused. If we were called upon to pay twenty millions, shilling for shilling, or at the rate of one for forty, our legislature could refuse it, and remonstrate against the injustice of the demand. But now this could not be done; for direct taxation is brought home to us. The federal officer collects immediately of the planters. When it withholds the only possible means of dis-

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charging those debts, and by direct taxation prevents any opposition to the most enormous and unjust demand, where are you? Is there a ray of hope? As the law has never been my profession, if I err, I hope to be excused. I spoke from the general sense of the words. The worthy gentleman has told you that the United States can be plaintiffs, but never defendants. If so, it stands on very unjust grounds. The United States cannot be come at for any thing they may owe, but may get what is due to them. There is therefore no reciprocity. The thing is so incomprehensible that it cannot be explained. As an express power is given to the federal court to take cognizance of such controversies, and to declare null all *ex post facto* laws, I think gentlemen must see there is danger, and that it ought to be guarded against.

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

But I fear the very extensive assertions of the gentleman may have misled the committee. The whole of that Continental money amounted to but little more than one hundred

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

Mr. MASON was still convinced of the rectitude of his former opinion. He thought it might be put on a safer footing by three words. By continuing the restriction of *ex post facto* laws to crimes, it would then stand under the new government as it did under the old.

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

[The next clause of the 10th section was read.]

Mr. GEORGE MASON. Mr. Chairman, if gentlemen attend to this clause, they will see we cannot make any inspection law but what is subject to the control and revision of Congress. Hence gentlemen who know nothing of the business will make rules concerning it which may be detrimental to our interests. For forty years we have laid duties on tobacco, to defray the expenses of the inspection, and to raise an incidental revenue for the state. Under this clause, that incidental *revenue* which is calculated to pay for the inspection, and to defray contingent charges, is to be put into the federal treasury. But if any tobacco-house is burnt, we cannot make up the loss. I conceive this to be unjust and unreasonable. When any profit arises from it, it goes

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into the federal treasury. But when there is any loss or deficiency from damage, it cannot be made up. Congress are to make regulations for our tobacco. Are men, in the states where no tobacco is made, proper judges of this business? They may perhaps judge as well, but surely no better than our own immediate legislature, who are accustomed and familiar with this business. This is one of the most wanton powers of the general government. I would concede any power that was essentially necessary for the interests of the Union; but this, instead of being necessary, will be extremely oppressive.

Mr. GEORGE NICHOLAS. Mr. Chairman, I consider this clause as a good regulation. It will be agreed to that they will impose duties in the most impartial manner, and not throw the burdens on a part of the community. Every man who is acquainted with our laws must know that the duties on tobacco were as high as sixteen shillings a hogshead. The consequence was, that the tobacco-makers have paid upwards of twenty thousand pounds, annually, more than the other citizens; because they paid every other kind of tax, as well as the rest of the community. We have every reason to believe that this clause will prevent injustice and partiality. Tobacco-makers will be benefited by it. But the gentleman says that our tobacco regulations will be subject to the control of Congress, who will be unacquainted with the subject. The clause says that all such laws shall be subject to the revision and control of Congress. What laws are meant by this? It means laws imposing duties on the exports of tobacco. But it does not follow that laws made for the regulation of the inspection shall be subject to the revision of Congress. He may say that the laws for imposing duties on the exports of tobacco, and laws regulating the inspection, must be blended in the same acts. Give me leave to say that they need not be so; for the duties on exports might be in one law, and the regulation of the inspection in another. The states may easily make them separately. But, he says, we shall lose the profit. We shall, then, find equity in our legislature which we have not found heretofore; for, as they will lay it not for their own exclusive advantages, but partly for the benefit of others, they will not be interested in laying it partially. As to the effect of warehouses being burnt, I differ from him. A tax may be laid to make up this loss. Though the amount of the duties go into the fed-

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eral treasury, yet a tax may be laid for that purpose. Is it not necessary and just, if the inspection law obliges the planter to carry his tobacco to a certain place, that he should receive a compensation for the loss, if it be destroyed? The legislature must defray the expenses and contingent charges by laying a tax for that purpose; for such a tax is not prohibited. The net amounts only go into the federal treasury after paying the expenses. Gentlemen must be pleased with this part, especially those who are tobacco-makers.

Mr. GEORGE MASON replied, that the state legislatures could make no law but what would come within the general control given to Congress; and that the regulation of the inspection, and the imposition of duties, must be inseparably blended together.

Mr. MADISON. Mr. Chairman, let us take a view of the relative situation of the states. Some states export the produce of other states. Virginia exports the produce of North Carolina; Pennsylvania, that of New Jersey and Delaware; and Rhode Island, that of Connecticut and Massachusetts. The exporting states wished to retain the power of laying duties on exports, to enable them to pay the expenses incurred. The states whose produce is exported by other states were extremely jealous, lest a contribution should be raised of them by the exporting states, by laying heavy duties on their commodities. If this clause be fully considered, it will be found to be more consistent with justice and equity than any other practicable mode; for, if the states had the exclusive imposition of duties on exports, they might raise a heavy contribution from other states, for their own exclusive emolument. The honorable member who spoke in defence of the clause has fairly represented it. As to the reimbursement of the loss that may be sustained by individuals, a tax may be laid on tobacco, when brought to the warehouses, for that purpose. The sum arising therefrom may be appropriated to it consistently with the clause; for it only says that "the *net* produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States," which necessarily implies that all contingent charges shall have been previously paid.

[The 1st section of the 2d article was then read.]

Mr. GEORGE MASON. Mr. Chairman, there is not a

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more important article in the Constitution than this. The great fundamental principle of responsibility in republicanism is here sapped. The President is elected without rotation. It may be said that a new election may remove him, and place another in his stead. If we judge from the experience of all other countries, and even our own, we may conclude that, as the President of the United States may be reëlected, so he will. How is it in every government where rotation is not required? Is there a single instance of a great man not being reëlected? Our governor is obliged to return, after a given period, to a private station. It is so in most of the states. This President will be elected time after time: he will be continued in office for life. If we wish to change him, the great powers in Europe will not allow us.

The honorable gentleman, my colleague in the late federal Convention, mentions, with applause, those parts of which he had expressed his disapprobation, he says not a word. If I am mistaken, let me be put right. I shall not make use of his name; but, in the course of this investigation, I shall use the arguments of that gentleman against it.

Will not the great powers of Europe, as France and Great Britain, be interested in having a friend in the President of the United States? and will they not be more interested in his election than in that of the king of Poland? The people of Poland have a right to displace their king. But do they ever do it? No. Prussia and Russia, and other European powers, would not suffer it. This clause will open a door to the dangers and misfortunes which the people of Poland undergo. The powers of Europe will interpose, and we shall have a civil war in the bowels of our country, and be subject to all the horrors and calamities of an elective monarchy. This very executive officer may, by consent of Congress, receive a stated pension from European potentates. This is not an idea altogether new in America. It is not many years ago — since the revolution — that a foreign power offered emoluments to persons holding offices under our government. It will, moreover, be difficult to know whether he receives emoluments from foreign powers or not. The electors, who are to meet in each state to vote for him, may be easily influenced. To prevent the certain evils of attempting to elect a new President, it will be necessary to continue the

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old one. The only way to alter this would be to render him ineligible after a certain number of years, and then no foreign nation would interfere to keep in a man who was utterly ineligible. Nothing is so essential to the preservation of a republican government as a periodical rotation. Nothing so strongly impels a man to regard the interest of his constituents as the certainty of returning to the general mass of the people, from whence he was taken, where he must participate their burdens. It is a great defect in the Senate that they are not ineligible at the end of six years. The biennial exclusion of one third of them will have no effect, as they can be reëlected. Some stated time ought to be fixed when the President ought to be reduced to a private station. I should be contented that he might be elected for eight years; but I would wish him to be capable of holding the office only eight years out of twelve or sixteen years. But, as it now stands, he may continue in office for life; or, in other words, it will be an elective monarchy.

Gov. RANDOLPH. Mr. Chairman, the honorable gentleman last up says that I do not mention the parts to which I object. I have hitherto mentioned my objections with freedom and candor. But, sir, I considered that our critical situation rendered adoption necessary, were it even more defective than it is. I observed that if opinions ought to lead the committee on one side, they ought on the other. Every gentleman who has turned his thoughts to the subject of politics, and has considered the most eligible mode of republican government, agrees that the greatest difficulty arises from the executive — as to the time of his election, mode of his election, quantum of power, &c. I will acknowledge that, at one stage of this business, I had embraced the idea of the honorable gentleman, that the reëligibility of the President was improper. But I will acknowledge that, on a further consideration of the subject, and attention to the lights which were thrown upon it by others, I altered my opinion of the limitation of his eligibility. When we consider the advantages arising to us from it, we cannot object to it. That which has produced my opinion against the limitation of his eligibility is this — that it renders him more independent in his place, and more solicitous of promoting the interest of his constituents; for, unless you put it in his power to be re-elected, instead of being attentive to their interests, he will

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lean to the augmentation of his private emoluments. This subject will admit of high coloring and plausible arguments; but, on considering it attentively and coolly, I believe it will be found less exceptionable than any other mode. The mode of election here excludes that faction which is productive of those hostilities and confusion in Poland. It renders it unnecessary and impossible for foreign force or aid to interpose. The electors must be elected by the people at large. To procure his reëlection, his influence must be coextensive with the continent. And there can be no combination between the electors, as they elect him on the same day in every state. When this is the case, how can foreign influence or intrigue enter? There is no reason to conclude, from the experience of these states, that he will be continually reëlected. There have been several instances where officers have been displaced, where they were reëligible. This has been the case with the executive of Massachusetts, and I believe of New Hampshire. It happens, from the mutation of sentiments, though the officers be good.

There is another provision against the danger, mentioned by the honorable member, of the President receiving emoluments from foreign powers. If discovered, he may be impeached. If he be not impeached, he may be displaced at the end of the four years. By the 9th section of the 1st article, "no person, holding an office of profit or trust, shall accept of any present or emolument whatever, from any foreign power, without the consent of the representatives of the people;" and by the 1st section of the 2d article, his compensation is neither to be increased nor diminished during the time for which he shall have been elected; and he shall not, during that period, receive any emolument from the United States or any of them. I consider, therefore, that he is restrained from receiving any present or emolument whatever. It is impossible to guard better against corruption. The honorable member seems to think that he may hold his office without being reëlected. He cannot hold it over four years, unless he be reëlected, any more than if he were prohibited. As to forwarding and transmitting the certificates of the electors, I think the regulation as good as could be provided.

Mr. GEORGE MASON. Mr. Chairman, the Vice-President appears to me to be not only an unnecessary but dangerous officer. He is, contrary to the usual course of

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parliamentary proceedings, to be president of the Senate. The state from which he comes may have two votes, wher the others will have but one. Besides, the legislative ano executive are hereby mixed and incorporated together. I cannot, at this distance of time, foresee the consequences; but I think that, in the course of human affairs, he will be made a tool of in order to bring about his own interest, and aid in overturning the liberties of his country. There is another part which I disapprove of, but which perhaps I do not understand. "In case of removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected." The power of Congress is right and proper so far as it enables them to provide what officer shall act, in case both the President and Vice-President be dead or disabled. But gentlemen ought to take notice that the election of this officer is only for four years. There is no provision for a speedy election of another President, when the former is dead or removed. The influence of the Vice-President may prevent the election of the President. But perhaps I may be mistaken.

Mr. MADISON. Mr. Chairman, I think there are some peculiar advantages incident to this office, which recommend it to us. There is, in the first place, a great probability this officer will be taken from one of the largest states; and, if so, the circumstance of his having an eventual vote will be so far favorable. The consideration which recommends it to me is, that he will be the choice of the people at large. There are to be ninety-one electors, each of whom has two votes: if he have one fourth of the whole number of votes. he is elected Vice-President. There is much more propriety in giving this office to a person chosen by the people at large, than to one of the Senate, who is only the choice of the legislature of one state. His eventual vote is an advantage too obvious to comment upon. I differ from the honorable member in the case which enables Congress to make a temporary appointment. When the President and Vice

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President die, the election of another President will immediately take place; and suppose it would not,—all that Congress could do would be to make an appointment between the expiration of the four years and the last election, and to continue only to such expiration. This can rarely happen. This power continues the government in motion, and is well guarded.

WEDNESDAY, *June* 18, 1788.

[The 1st section of article 2 still under consideration.]

Mr. MONROE, after a brief exordium, in which he insisted that, on the judicious organization of the executive power, the security of our interest and happiness greatly depended; that, in the construction of this part of the government, we should be cautious in avoiding the defects of other governments; and that our circumspection should be commensurate to the extent of the powers delegated,—proceeded as follows: The President ought to act under the strongest impulses of rewards and punishments, which are the strongest incentives to human actions. There are two ways of securing this point. He ought to depend on the people of America for his appointment and continuance in office; he ought also to be responsible, in an equal degree, to all the states, and to be tried by dispassionate judges; his responsibility ought further to be direct and immediate. Let us consider, in the first place, then, how far he is dependent on the people of America. He is to be elected by electors, in a manner perfectly dissatisfactory to my mind. I believe that he will owe his election, in fact, to the state governments, and not to the people at large. It is to be observed that Congress have it in their power to appoint the time of choosing the electors, and of electing the President. Is it not presumable they will appoint the times of choosing the electors, and electing the President, at a considerable distance from each other, so as to give an opportunity to the electors to form a combination? If they know that such a man as they wish—for instance, the actual President—cannot possibly be elected by a majority of the whole number of electors appointed, yet if they can prevent the election, by such majority, of any one they disapprove of, and if they can procure such a number of votes as will be sufficient to make their favorite one of the five highest on the list, they may ultimately carry the election into the general Con-

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gress, where the votes, in choosing him, shall be taken by states, each state having one vote. Let us see how far this is compatible with the security of republicanism. Althougl. this state is to have ten, and Massachusetts eight representatives, and Delaware and Rhode Island are to have but one each, yet the vote is to be by states only. The consequence will be that a majority of the states, and these consisting of the smallest, may elect him; this will give an advantage to the small states. He will depend, therefore, on the states for his reëlection and continuance in office, and not on the people. Does it not bear the complexion of the late Confederation? He will conduct himself in accommodation to them, since by them he is chosen, and may be again. If he accommodates himself to the interest of particular states, will they not be obliged, by state policy, to support him afterwards? Let me inquire into his responsibility if he does not depend on the people. To whom is he responsible? To the Senate, his own council. If he makes a treaty, bartering the interests of his country, by whom is he to be tried? By the very persons who advised him to perpetrate the act. Is this any security? I am persuaded that the gentleman who will be the first elected may continue in the office for life.

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

The Vice-President is an unnecessary officer. I can see

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

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

Mr. GRAYSON. Mr. Chairman, one great objection with me is this: If we advert to this democratical, aristocratical, or executive branch, we shall find their powers are perpetually varying and fluctuating throughout the whole. Perhaps the democratic branch would be well constructed, were it not for this defect. The executive is still worse, in this respect, than the democratic branch. He is to be elected by a number of electors in the country; but the principle is changed when no person has a majority of the whole number of electors appointed, or when more than one have such a majority, and have an equal number of votes; for then the lower house is to vote by states. It is thus changing throughout the whole. It seems rather founded on accident than any principle of government I ever heard of. We know that there scarcely ever was an election of such an officer without the interposition of foreign powers. Two causes prevail to make them intermeddle in such cases: — one is, to preserve the balance of power; the other, to preserve their trade. These causes have produced interferences of foreign powers in the election of the king of Poland. All the great powers of Europe have interfered in an election which took place not very long ago, and would not let the people choose for themselves. We know how much the powers of Europe have interfered with Sweden. Since the death of Charles XII., that country has been a republican government. Some powers were willing it should be so; some were willing her imbecility should continue; others wished the contrary; and at length the court of France

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brought about a revolution, which converted it into an absolute government. Can America be free from these interferences? France, after losing Holland, will wish to make America entirely her own. Great Britain will wish to increase her influence by a still closer connection. It is the interest of Spain, from the contiguity of her possessions in the western hemisphere to the United States, to be in an intimate connection with them, and influence their deliberations, if possible. I think we have every thing to apprehend from such interferences. It is highly probable the President will be continued in office for life. To gain his favor, they will support him. Consider the means of importance he will have by creating officers. If he has a good understanding with the Senate, they will join to prevent a discovery of his misdeeds.

Whence comes this extreme confidence, that we disregard the example of ancient and modern nations? We find that aristocracies never invested their officers with such immense powers. Rome had not only an aristocratical, but also a democratical branch; yet the consuls were in office only two years. This quadrennial power cannot be justified by ancient history. There is hardly an instance where a republic trusted its executive so long with much power; nor is it warranted by modern republics. The delegation of power is, in most of them, only for one year.

When you have a strong democratical and a strong aristocratical branch, you may have a strong executive. But when those are weak, the balance will not be preserved, if you give the executive extensive powers for so long a time. As this government is organized, it would be dangerous to trust the President with such powers. How will you punish him if he abuse his power? Will you call him before the Senate? They are his counsellors and partners in crime. Where are your checks? We ought to be extremely cautious in this country. If ever the government be changed, it will probably be into a despotism. The first object in England was to destroy the monarchy; but the aristocratic branch restored him, and of course the government was organized on its ancient principles. But were a revolution to happen here, there would be no means of restoring the government to its former organization. This is a caution to us not to trust extensive powers. I have an extreme objection

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to the mode of his election. I presume the seven Eastern States will always elect him. As he is vested with the power of making treaties, and as there is a material distinction between the carrying and productive states, the former will be disposed to have him to themselves. He will accommodate himself to their interests in forming treaties, and they will continue him perpetually in office. Thus mutual interest will lead them reciprocally to support one another. It will be a government of a faction, and this observation will apply to every part of it; for, having a majority, they may do what they please. I have made an estimate which shows with what facility they will be able to reëlect him. The number of electors is equal to the number of representatives and senators; viz., ninety-one. They are to vote for two persons. They give, therefore, one hundred and eighty-two votes. Let there be forty-five votes for four different candidates, and two for the President. He is one of the five highest, if he have but two votes, which he may easily purchase. In this case, by the 3d clause of the 1st section of the 2d article, the election is to be by the representatives, according to states. Let New Hampshire be for him, — a majority of its

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

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

The total number of voices (91 electors and 65 representatives) is - - - - - - - - - - - - - 156

Voices in favor of the President are, 2 state electors and 15 representatives, - - - - - - - - - 17

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So that the President may be reëlected by the voices of 17 against 139.

It may be said that this is an extravagant case, and will never happen. In my opinion, it will often happen. A

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person who is a favorite of Congress, if he gets but two votes of electors, may, by the subsequent choice of 15 representatives, be elected President. Surely the possibility of such a case ought to be excluded. I shall postpone mentioning in what manner he ought to be elected, till we come to offer amendments.

Mr. GEORGE MASON contended that this mode of election was a mere deception, — a mere *ignis fatuus* on the American people, — and thrown out to make them believe they were to choose him; whereas it would not be once out of fifty times that he would be chosen by them in the first instance, because a majority of the whole number of votes was required. If the localities of the states were considered, and the probable diversity of the opinions of the people attended to, he thought it would be found that so many persons would be voted for, that there seldom or never could be a majority in favor of one, except one great name, who, he believed, would be unanimously elected. He then continued thus: — A majority of the whole number of electors is necessary, to elect the President. It is not the greatest number of votes that is required, but a majority of the whole number of electors. If there be more than one having such majority, and an equal number, one of them is to be chosen by ballot of the House of Representatives. But if no one have a majority of the actual number of electors appointed, how is he to be chosen? From the five highest on the list, by ballot of the lower house, and the votes to be taken by states. I conceive he ought to be chosen from the two highest on the list. This would be simple and easy; then, indeed, the people would have some agency in the election. But when it is extended to the five highest, a person having a very small number of votes may be elected. This will almost constantly happen. The states may choose the man in whom they have most confidence. This, in my opinion, is a very considerable defect. The people will, in reality, have no hand in the election.

It has been wittily observed that the Constitution has *married* the President and Senate — has made them man and wife. I believe the consequence that generally results from marriage will happen here. They will be continually supporting and aiding each other: they will always consider their interest as united. We know the advantage the few have over

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the many. They can with facility act in concert, and on a uniform system: they may join, scheme, and plot, against the people without any chance of detection. The Senate and President will form a combination that cannot be prevented by the representatives. The executive and legislative powers, thus connected, will destroy all balances: this would have been prevented by a constitutional council, to aid the President in the discharge of his office, vesting the Senate, at the same time, with the power of impeaching them. Then we should have real responsibility. In its present form, the guilty try themselves. The President is tried by his counsellors. He is not removed from office during his trial. When he is arraigned for treason, he has the command of the army and navy, and may surround the Senate with thirty thousand troops. It brings to my recollection the remarkable trial of Milo at Rome. We may expect to see similar instances here. But I suppose that the cure for all evils — the virtue and integrity of our representatives — will be thought a sufficient security. On this great and important subject, I am one of those (and ever shall be) who object to it.

Mr. MADISON. Mr. Chairman, I will take the liberty of making a few observations, which may place this in such a light as may obviate objections. It is observed that none of the honorable members objecting to this have pointed out the right mode of election. It was found difficult in the Convention, and will be found so by any gentleman who will take the liberty of delineating a mode of electing the President that would exclude those inconvenienees which they apprehend. I would not contend against some of the principles laid down by some gentlemen, if the interests of some states only were to be consulted. But there is a great diversity of interests. The choice of the people ought to be attended to. I have found no better way of selecting the man in whom they place the highest confidence, than that delineated in the plan of the Convention; nor has the gentleman told us. Perhaps it will be found impracticable to elect him by the immediate suffrages of the people. Difficulties would arise from the extent and population of the states. Instead of this, the people choose the electors.

This can be done with ease and convenience, and will render the choice more judicious. As to the eventual voting

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by states, it has my approbation. The lesser states, and some large states, will be generally pleased by that mode The deputies from the small states argued (and there is some force in their reasoning) that, when the people voted, the large states evidently had the advantage over the rest, and, without varying the mode, the interest of the little states might be neglected or sacrificed. Here is a compromise; for in the eventual election, the small states will have the advantage. In so extensive a country, it is probable that many persons will be voted for, and the lowest of the five highest on the list may not be so inconsiderable as he supposes. With respect to the possibility that a small number of votes may decide his election, I do not know how, nor do I think that a bare calculation of possibility ought to govern us. One honorable gentleman has said that the Eastern States may, in the eventual election, choose him. But, in the extravagant calculation he has made, he has been obliged to associate North Carolina and Georgia with the five smallest Northern States. There can be no union of interest or sentiments between states so differently situated.

The honorable member last up has committed a mistake in saying there must be a majority of the whole number of electors appointed. A majority of votes, equal to a majority of the electors appointed, will be sufficient. Forty-six is a majority of ninety-one, and will suffice to elect the President.

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

Mr. MADISON expressed astonishment at the construction of the honorable member, and insisted that nothing was necessary but a number of votes equal to a majority of the electors, which was forty-six; for the clause expressly said that "the person having the greatest number of votes shall be President, if such number be a majority of the whole number of electors appointed." Each had two votes, because one vote was intended for the Vice-President. I am surprised, continued Mr. Madison, that the honorable mem-

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ber has not pointed out a more proper mode, since he objects to this.

But the honorable gentleman tells us that the President and Senate will be in alliance against the representatives, and that, from the advantage of the few over the many, they may seduce or overrule the representatives. But if this be the case, how can he contend for the augmentation of the number of the latter? for the more you increase their number, the more danger in the disproportion. The diversity of circumstances, situation, and extent, of the different states, will render previous combination, with respect to the election of the President, impossible.

[The 1st clause of the 2d section was read.]

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

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office, are the only consequences of conviction on impeach ment. Now, I conceive that the President ought not to have the power of pardoning, because he may frequently pardon crimes which were advised by himself. It may happen, at some future day, that he will establish a monarchy, and destroy the republic. If he has the power of granting pardons before indictment, or conviction, may he not stop inquiry and prevent detection? The case of treason ought, at least, to be excepted. This is a weighty objection with me.

Mr. LEE reminded his honorable friend that it did not follow, of necessity, that the President should command in person; that he was to command as a civil officer, and might only take the command when he was a man of military talents, and the public safety required it. He thought the power of pardoning, as delineated in the Constitution, could be nowhere so well placed as in the President. It was so in the government of New York, and had been found safe and convenient.

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

Mr. GEORGE NICHOLAS hoped the committee would not advert to this; that the army and navy were to be raised by Congress, and not by the President. It was on the same footing with our state government; for the governor, with the council, was to imbody the militia, but, when actually imbodied, they were under the sole command of the governor. The instance adduced was not similar. General Washington was not a President. As to possible danger, any commander might attempt to pervert what was intended for the common defence of the community to its destruction. The President, at the end of four years, was to relinquish all his offices. But if any other person was to have the command, the time would not be limited.

Mr. MASON answered, that it did not resemble the state Constitution, because the governor did not possess such extensive powers as the President, and had no influence over the navy. The liberty of the people had been destroyed by those who were military commanders only. The danger here was greater by the junction of great civil powers to the

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command of the army and fleet. Although Congress are to raise the army, said he, no security arises from that; for, in time of war, they must and ought to raise an army, which will be numerous, or otherwise, according to the nature of the war, and then the President is to command without any control.

Mr. MADISON, adverting to Mr. Mason's objection to the President's power of pardoning, said it would be extremely improper to vest it in the House of Representatives, and not much less so to place it in the Senate; because numerous bodies were actuated more or less by passion, and might, in the moment of vengeance, forget humanity. It was an established practice in Massachusetts for the legislature to determine in such cases. It was found, says he, that two different sessions, before each of which the question came with respect to pardoning the delinquents of the rebellion, were governed precisely by different sentiments: the one would execute with universal vengeance, and the other would extend general mercy.

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

Mr. MASON vindicated the conduct of the assemblies mentioned by the gentleman last up. He insisted they were both right; for, in the first instance, when such ideas of severity prevailed, a rebellion was in existence: in such circumstance, it was right to be rigid. But after it was over, it would be wrong to exercise unnecessary severity.

Mr. MADISON replied, that the honorable member had misunderstood the fact; for the first assembly was after the rebellion was over. The decision must have been improper in one or the other case. It marks this important truth, says he, that numerous bodies of men are improper to exercise this power. The universal experience of mankind proves it.

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[The 2d clause of the 2d section was then read.]

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

Mr. GEORGE NICHOLAS, in answer to Mr. Mason, insisted that we were on a safer footing in this Constitution than in the Confederation. The possibility of five states making treaties was founded on a supposition of the non-attendance of the senators from the other states. This non-attendance, he observed, might be reciprocated. It was presumable that, on such important occasions, they would attend from all the states, and then there must be a concurrence of nine states. The approbation of the President, who had no local views, being elected by no particular state, but the people at large, was an additional security.

Mr. MASON differed widely from the gentleman. He conceived that the contiguity of some states, and remoteness of others, would prevent that reciprocity which he had mentioned. Some states were near the seat of government; others far from it; for instance, Georgia was eight or nine hundred miles from it. Suppose, says he, a partial treaty is made by the President, and is to be ratified by the Senate. They do not always sit. Who is to convene them? The President. Is it presumable that he would call distant states to make the ratification, or those states whose interest he knew to be injured by the treaty he had proposed? This, I conceive, will have a contrary effect from what the gentleman says.

A desultory conversation took place.

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

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Mr LEE compared the possibility of non-attendance of the senators to that in our state legislature. It consisted of one hundred and seventy members: a majority of these was forty-four, which were competent to pass any law. He demanded if all our laws were bad because forty-four might pass them. The case was similar. Although two thirds of the senators present could form a treaty, it was not presumable it could often happen that there should be but a bare quorum present on so important an occasion, when the consequence of non-attendance was so well known.

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

Mr. HENRY begged gentlemen to consider the condition this country would be in if two thirds of a quorum should be empowered to make a treaty: they might relinquish and alienate territorial rights, and our most valuable commercial advantages. In short, if any thing should be left us, it would be because the President and senators were pleased to admit it. The power of making treaties, by this Constitution, ill-guarded as it is, extended farther than it did in any country in the world. Treaties were to have more force here than in any part of Christendom; for he defied any gentleman to show any thing so extensive in any strong, energetic government in Europe. Treaties rest, says he, on the laws and usages of nations. To say that they are municipal is, to me, a doctrine totally novel. To make them paramount to the Constitution and laws of the states, is unprecedented. I would give them the same force and obligation they have in Great Britain, or any other country in Europe. Gentlemen are going on in a fatal career; but I hope they will stop before they concede this power unguarded and unaltered.

Mr. MADISON, instead of being alarmed, had no doubt but the Constitution would increase, rather than decrease, the security of territorial rights and commercial advantages, as it would augment the strength and respectability of the country. The honorable gentleman, says he, has said we are making

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great innovations in extending the force of treaties. Are not treaties the law of the land in England? I will refer you to a book which is in every man's hand — Blackstone's Commentaries. It will inform you that the treaties made by the king are to be the supreme law of the land. If they are to have any efficacy, they must be the law of the land: they are so in every country. He thinks that, by the power of making treaties, the empire may be dismembered in time of peace. The king of Great Britain has the power of making peace, but he has no power of dismembering the empire, or alienating any part of it. Nay, the king of France has no right of alienating part of his dominions to any power whatsoever. The power of making treaties does not involve a right of dismembering the Union.

Mr. HENRY asked how the power of the king of Great Britain, with respect to dismembering the empire, would stand, if the constitution had declared that treaties would be effectual, notwithstanding any thing in the constitution or laws of the country. He would confess his error, if the gentleman could prove that the power of the king of Great Britain, and that of Congress, in making treaties, were similar.

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

Mr. GRAYSON, after discriminating the difference of what was called the law of nations in different countries, and its different operations, said he was exceedingly alarmed about this clause. His apprehensions were increased from what he had seen. He went over the grounds which had been before developed, of the dangers to which the right of navigating the Mississippi would be exposed, if two thirds of the senators present had a right to make a treaty to bind the Union. Seven states had already discovered a determined resolution of yielding it to Spain. There was every reason, in his opinion, to believe they would avail themselves of the power as soon as it was given them. The prevention of emigrations to the westward, and consequent superiority of the southern power and influence, would be a powerful motive to impel them to relinquish that river. He warmly expatiated on the utility of that navigation, and the

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impolicy of surrendering it up. The consent of the President he considered as a trivial check, if, indeed, it was any; for the election would be so managed that he would always come from a particular place, and he would pursue the interest of such place. Gentlemen had said that the senators would attend from all the states. This, says he, is impracticable, if they be not nailed to the floor. If the senators of the Southern States be gone but one hour, a treaty may be made by the rest, yielding that inestimable right. This paper will be called the law of nations in America; it will be the Great Charter of America; it will be paramount to every thing. After having once consented to it, we cannot recede from it. Such is my repugnance to the alienation of a right which I esteem so important to the happiness of my country, that I would object to this Constitution if it contained no other defect.

Mr. NICHOLAS, in answer to the observations of the gentleman last up, on the law of nations, said he thought it was dictated by no particular nation; that there was no such thing as a particular law of nations, but that the law of nations was permanent and general. It was superior to any act or law of any nation; it implied the consent of all, and was mutually binding on all, being acquiesced in for the common benefit of all. Gentlemen recurred to their favorite business again — their scuffle for Kentucky votes. He compared the king of England's power to make treaties to that given by this clause. He insisted they resembled each other. If a treaty was to be the supreme law of the land here, it was so in England. The power was as unlimited in England as it was here. Let gentlemen, says he, show me that the king can go so far, and no farther, and I will show them a like limitation in America. But, say they, the President has no check. The worthy member says the weight of power ought to be in this part of the continent, because the number of inhabitants will be greater here. If so, every freeholder having a right to vote for the President, by the interposition of electors, will attend to his interests. This is a sufficient check.

Mr. HENRY. Mr. Chairman, gentlemen say that the king of Great Britain has the same right of making treaties that our President has here. I will have no objection to this, if you make your president a king. But I will adduce

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

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within the line of his prerogative, it is the law of the land. I agree that this is proper, and, if I could see the same checks in that paper which I see in the British government, I would consent to it. Can the English monarch make a treaty which shall subvert the common law of England, and the constitution? Dare he make a treaty that shall violate Magna Charta, or the bill of rights? Dare he do any thing derogatory to the honor, or subversive of the great privileges, of his people? No, sir. If he did, it would be nugatory, and the attempt would endanger his existence.

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

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

The honorable gentleman says that, if you place treaties on the same footing here as they are in England, he will consent to the power, because the king is restrained in making treaties. Will not the President and Senate be restrained? Being creatures of that Constitution, can they destroy it? Can any particular body, instituted for a particular purpose, destroy the existence of the society for whose benefit it is created? It is said there is no limitation of treaties. I defy the wisdom of that gentleman to show how they ought to be limited. When the Constitution marks out the powers to be exercised by particular departments, I say no innovation can take place. An honorable gentleman says that this is the Great Charter of America. If so, will not the last clause of the 4th article of the Constitution secure against dismemberment? It provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state." And if this did not constitute security, it

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follows, from the nature of civil association, that no particular part shall sacrifice the whole.

WEDNESDAY, *June* 18, 1788.

Mr. GRAYSON, after recapitulating the dangers of losing the Mississippi, if the power of making treaties, as delineated in the Constitution, were granted, insisted, most strenuously, that the clause which the honorable gentleman had cited as a security against a dismemberment of the empire was no real security; because it related solely to the back lands claimed by the United States and different states. This clause was inserted for the purpose of enabling Congress to dispose of, and make all needful rules and regulations respecting, the territory, or other property, belonging to the United States, and to ascertain clearly that the claims of particular states, respecting territory, should not be prejudiced by the alteration of government, but be on the same footing as before; that it could not be construed to be a limitation of the power of making treaties. Its sole intention was to obviate all the doubts and disputes which existed, under the Confederation, concerning the western territory and other places in controversy in the United States. He defended his former position with respect to a particular law of nations. I insist, says he, that the law of nations is founded on particular laws of different nations. I have mentioned some instances: I will mention some more. It is the part of the laws of several Oriental nations to receive no ambassadors, and to burn their prisoners. It is a custom with the grand seignior to receive, but not to send ambassadors. It is a particular custom with him, in time of war with Russia, to put the Russian ambassador in the Seven Towers. But the worthy member said that it was odd there should be a particular law of nations. I beg leave to tell him that the United States are entering into a particular law of nations now. I do not deny the existence of a general law of nations; but I contend that, in different nations, there are certain laws or customs, regulating their conduct towards other nations, which are as permanently and immutably observed as the general law of nations. Of course there was a law of nations incident to the Confederation. Any person may renounce a right secured to him by any particular law or custom of a nation. If Congress have no right, by the law of nations, to give away a part of the empire, yet, by this

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compact, they may give it up. I look on that compact to be a part of the law of nations. The treaty of Munster formed a great part of the law of nations. How is the Scheldt given up? By that treaty, though contrary to the law of nations. Cannot Congress give the Mississippi also by treaty, though such cession would deprive us of a right to which, by the law of nations, we are inalienably and indefeasibly entitled? I lay it down as a principle that nations can, as well as individuals, renounce any particular right. Nations who inhabit on the sources of rivers have a right to navigate them, and go down, as well as the waters themselves.

Mr. GEORGE NICHOLAS again drew a parallel between the power of the king of Great Britain and that of Congress, with respect to making treaties. He contended that they were on the same foundation, and that every possible security which existed in the one instance was to be found in the other. To prove that there was no constitutional limit to the king's power of making treaties, and that treaties, when once by him made, were the supreme law of the land, he quoted the following lines in Blackstone's Commentaries, vol. i. page 257: "It is also the king's prerogative to make treaties, leagues, and alliances, with foreign states and princes; for it is, by the law of nations, essential to the goodness of a league, that it be made by the sovereign power; and then it is binding upon the whole community; and in England the sovereign power, *quoad hoc*, is vested in the person of the king. Whatever contracts, therefore, he engages in, no other power in the kingdom can legally delay, resist, or annul." A further proof, says Mr. Nicholas, that there is no limitation in this respect, is afforded by what he adds: "And yet, lest this plenitude of authority should be abused, to the detriment of the public, the constitution has interposed a check, by the means of parliamentary impeachment, for the punishment of such ministers as, from criminal motives, advise or conclude any treaty which shall afterwards be judged to derogate from the honor and interest of the nation." How does this apply to this Constitution? The President and Senate have the same power of making treaties; and when made, they are to have the same force and validity. They are to be the supreme law of the land here. This book shows us they are so in England.

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Have we not seen, in America, that treaties were violated, though they are, in all countries, considered as the supreme law of the land? Was it not, therefore, necessary to declare, in explicit terms, that they should be so here? How, then, is this Constitution on a different footing from the government of Britain? The worthy member says, that they can make a treaty relinquishing our rights, and inflicting punishments; because all treaties are declared paramount to the constitutions and laws of the states. An attentive consideration of this will show the committee that they can do no such thing. The provision of the 6th article is, that this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land. They can, by this, make no treaty which shall be repugnant to the spirit of the Constitution, or inconsistent with the delegated powers. The treaties they make must be under the authority of the United States, to be within their province. It is sufficiently secured, because it only declares that, in pursuance of the powers given, they shall be the supreme law of the land, notwithstanding any thing in the constitution or laws of particular states.

The fact which he has adduced from the English history respecting the Russian ambassador, does not apply to this part of the Constitution. The arrest of that ambassador was an offence against the law of nations. There was no tribunal to punish it before. An act was therefore made to prevent such offences for the future; appointing a court to try offenders against it, and pointing out their punishment. That act acknowledges the arrest to have been a violation of the law of nations, and that it was a defect in their laws that no remedy had been provided against such violations before. I think it must appear, to the satisfaction of the committee, that this power is similar to what it is in England.

Mr. GEORGE MASON. Mr. Chairman, it is true that this is one of the greatest acts of sovereignty, and therefore ought to be most strongly guarded. The cession of such a power, without such checks and guards, cannot be justified: yet I acknowledge such a power must rest somewhere. It is so in all governments. If, in the course of an unsuccess-

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ful war, we should be compelled to give up part of our territories, or undergo subjugation if the general government could not make a treaty to give up such a part for the preservation of the residue, the government itself, and consequently the rights of the people, must fall. Such a power must, therefore, rest somewhere. For my own part, I never heard it denied that such a power must be vested in the government. Our complaint is, that it is not sufficiently guarded, and that it requires much more solemnity and caution than are delineated in that system. It is more guarded in England. Will any gentleman undertake to say that the king, by his prerogative, can dismember the British empire? Could the king give Portsmouth to France? He could not do this without an express act of Parliament — without the consent of the legislature in all its branches. There are other things which the king cannot do, which may be done by the President and Senate in this case. Could the king, by his prerogative, enable foreign subjects to purchase lands, and have an hereditary indefeasible title? This would require an express act of Parliament.

Though the king can make treaties, yet he cannot make a treaty contrary to the constitution of his country. Where did their constitution originate? It is founded on a number of maxims, which, by long time, are rendered sacred and inviolable. Where are there such maxims in the American Constitution? In that country, which we formerly called our mother country, they have had, for many centuries, certain fundamental maxims, which have secured their persons and properties, and prevented a dismemberment of their country. The common law, sir, has prevented the power of the crown from destroying the immunities of the people. We are placed in a still better condition — in a more favorable situation than perhaps any people ever were before. We have it in our power to secure our liberties and happiness on the most unshaken, firm, and permanent basis. We can establish what government we please. But by that paper we are consolidating the United States into one great government, and trusting to constructive security. You will find no such thing in the English government. The common law of England is not the common law of these states. I conceive, therefore, that there is nothing in that Constitution to hinder a dismemberment of the empire.

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Will any gentleman say that they may not make a treaty, whereby the subjects of France, England, and other powers, may buy what lands they please in this country? This would violate those principles which we have received from the mother country. The indiscriminate admission of all foreigners to the first rights of citizenship, without any permanent security for their attachment to the country, is repugnant to every principle of prudence and good policy. The President and Senate can make any treaty whatsoever. We wish not to refuse, but to guard, this power, as it is done in England. The empire there cannot be dismembered without the consent of the national Parliament. We wish an express and explicit declaration, in that paper, that the power which can make other treaties cannot, without the consent of the national Parliament — the national legislature — dismember the empire. The Senate alone ought not to have this power; much less ought a few states to have it. No treaty to dismember the empire ought to be made without the consent of three fourths of the legislature in all its branches. Nor ought such a treaty to be made but in case of the most urgent and unavoidable necessity. When such necessity exists, there is no doubt but there will be a general and uniform vote of the Continental Parliament.

Mr. CORBIN largely expatiated on the propriety of vesting this power in the general government, in the manner proposed by the plan of the Convention. He also contended that the empire could not be dismembered without the consent of the part dismembered. To obviate the force of the observations made by an honorable gentleman respecting the relinquishment of the Scheldt, he adduced the late complaints and efforts of the emperor of Germany respecting that river. He insisted that no part of the Constitution was less exceptionable than this. If, says he, there be any sound part in this Constitution, it is in this clause. The representatives are excluded from interposing in making treaties, because large popular assemblies are very improper to transact such business, from the impossibility of their acting with sufficient secrecy, despatch, and decision, which can only be found in small bodies, and because such numerous bodies are ever subject to factions and party animosities. It would be dangerous to give this power to the President alone, as the concession of such power to one individual is repugnant to

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republican principles. It is, therefore, given to the President and the Senate (who represent the states in their individual capacities) conjointly. In this it differs from every government we know. It steers with admirable dexterity between the two extremes, neither leaving it to the executive, as in most other governments, nor to the legislative, which would too much retard such negotiation.

The honorable gentleman said that treaties are not the supreme law of the land in England. My honorable friend proved the contrary by the Commentaries of Blackstone. Let me confirm it by a circumstance fresh in the memory of every body. When the treaty was made by us with England, it was disapproved of by the English Parliament, and the administration was turned out: yet the treaty was good. Does not this prove that it was binding on the nation, and that the king has such a power? What other proof do gentlemen wish? In England, it is a maxim that the king can do no wrong, yet they have sufficient responsibility, as the ministry can do wrong; for if they advise him to make a treaty derogatory to the honor and interest of the nation, they do it at the risk of their heads. If the king were to make such a treaty himself, contrary to the advice of his ministry, an honest or prudent minister would resign. The President of the United States is responsible in person himself, as well as the senators.

But, say gentlemen, all treaties made under this Constitution are to be the supreme law of nations; that is, in their way of construction, paramount to the Constitution itself, and the laws of Congress. It is as clear as that two and two make four, that the treaties made are to be binding on the states only. Is it not necessary that they should be binding on the states? Fatal experience has proved that treaties would never be complied with, if their observance depended on the will of the states; and the consequences would be constant war. For if any one state could counteract any treaty, how could the United States avoid hostility with foreign nations? Do not gentlemen see the infinite dangers that would result from it, if a small part of the community could drag the whole confederacy into war?

The honorable gentleman on the other side tells us that this doctrine is not founded, because, in England, it is declared that the consent of Parliament is necessary. Had the hon-

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orable gentleman used his usual discernment and penetration, he would see the difference between a commercial treaty and other treaties. A commercial treaty must be submitted to the consideration of Parliament, because such treaties will render it necessary to alter some laws, add new clauses to some, and repeal others. If this be not done, the treaty is void, *quoad hoc*. The Mississippi cannot be dismembered but in two ways — by a common treaty, or a commercial treaty. If the interest of Congress will lead them to yield it by the first, the law of nations would justify the people of Kentucky to resist, and the cession would be nugatory. It cannot, then, be surrendered by a common treaty. Can it be done by a commercial treaty? If it should, the consent of the House of Representatives would be requisite, because of the correspondent alterations that must be made in the laws.

[Here Mr. Corbin illustrated his position by reading the last clause of the treaty with France, which gives certain commercial privileges to the subjects of France; to give full effect to which, certain correspondent alterations were necessary in the commercial regulations.]

This, continues he, secures legislative interference. Some of the most extraordinary calculations that ever were made have been adduced to prove that the navigation of the Mississippi is on a worse ground than it was before. We are told that five states can make a treaty. This is on a supposition that the senators from the other states will be absent, which is wild and extravagant. On this ground, three states can prevent it; and if Kentucky become a state, two other states, with it, can prevent the making such a treaty. I wish not to assert, but to prove. Suppose there be fourteen members, and the members from Kentucky be of the number. Two thirds, which are ten, are necessary to make a treaty. Three members, together with the two members from Kentucky, will be sufficient to prevent its being made. But suppose all the other states to be present, (which is the fair conclusion, for it is fair to conclude that men will be attentive to their own interest;) what would be the consequence? There would be twenty-eight; two thirds of which are nineteen, which is one member more than the senators of nine states; so that, in such a case, ten states must concur in the treaty; whereas, by the old Confederation, only nine states were necessary. I defy any man to

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confute this doctrine. The argument of gentlemen is therefore disingenuous. I am more forcibly led to this conclusion when I hear gentlemen go to barbarous nations to adduce proofs of the requisites of a social government.

Mr. HENRY. Mr. Chairman, this great national concern is handled in a manner quite new to me. When arguments are used which are calculated in their nature to mislead men, — when I reflect on the subject, I dread that our rights are about to be given away, though I may possibly be mistaken. I said yesterday, and not without thinking much on the subject, that my mind would be at ease were we on the same grounds, in this respect, as the English are. Gentlemen think that Great Britain was adduced by me, in this instance, unfortunately for myself, because the learned Judge Blackstone says that treaties are binding on the nation, and the king can make treaties. That learned judge says there is one thing which operates as a guard. That thing we have not in this paper — it is responsibility. He tells you that the minister who will sacrifice the interest of the nation is subject to parliamentary impeachment. This has been ever found to be effectual. But I beg gentlemen to consider the American impeachment. What is it? It is a mere sham — a mere farce. When they do any thing derogatory to the honor or interest of their country, they are to try themselves. Is it so in England? The history of that country shows that they have blocks and gibbets. The violators of the public interest have been tried justly and impartially, and perished by those necessary instruments of justice. Can there be any security where offenders mutually try one another? I hope gentlemen will consider the necessity of amendment in this clause.

We are told that the state rights are preserved. Suppose the state right to territory be preserved; I ask and demand, How do the rights of persons stand, when they have power to make any treaty, and that treaty is paramount to constitutions, laws, and every thing? When a person shall be treated in the most horrid manner, and most cruelly and inhumanly tortured, will the security of territorial rights grant him redress? Suppose an unusual punishment in consequence of an arrest similar to that of the Russian ambassador; can it be said to be contrary to the state rights?

I might go on in this discrimination; but it is too obvious

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that the security of territory is no security of individual safety. I ask, How are the state rights, individual rights, and national rights, secured? Not as in England; for the authority quoted from Blackstone would, if stated right prove, in a thousand instances, that, if the king of England attempted to take away the rights of individuals, the law would stand against him. The acts of Parliament would stand in his way. The bill and declaration of rights would be against him. The common law is fortified by the bill of rights. The rights of the people cannot be destroyed, even by the paramount operation of the law of nations, as the case of the Russian ambassador evinces. If you look for a similar security in the paper on your table, you look in vain. That paper is defective without such a declaration of rights. It is unbounded without such restrictions. If the Constitution be paramount, how are the constitutions and laws of the states to stand? Their operation will be totally controlled by it; for it is paramount to every thing, unless you can show some guard against it. The rights of persons are exposed as it stands now.

The calculation of the honorable gentleman (Mr. Corbin) was wrong. I am sure he spoke from the best of his recollection, when he referred to our treaty of peace with Great Britain, and said that it was binding on the nation, though disapproved of by Parliament. Did not an act of Parliament pass, acknowledging the independence of America? If the king of England wished to dismember the empire, would he dare to attempt it without the advice of Parliament? The most hardy minister would not dare to advise him to attempt it without a previous consultation of Parliament. No cession of territory is binding on the nation unless it be fortified by an act of Parliament. Will it be so in your American government? No. They will tell you that they are omnipotent as to this point.

We are so used to speak of enormity of powers, that we are familiarized with it. To me this power appears still destructive; for they can make any treaty. If Congress forbears to exercise it, you may thank them; but they may exercise it if they please, and as they please. They have a right, from the paramount power given them, to do so. Will the gentleman say that this power is paramount to the state laws only? Is it not paramount to the Constitution and

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every thing? Can any thing be paramount to what is paramount? Will not the laws of Congress be binding on Congress, as well as on any particular state? Will they not be bound by their own acts? The worthy gentleman must see the impropriety of his assertion. To render this safe, I conceive we must adopt my honorable friend's amendment. The component part of this supreme power are the President, senators, and House of Representatives. The latter is the most material part. They ought to interpose in the formation of treaties. When their consent is necessary, there will be a certainty of attending to the public interests.

Mr. Henry then contended that there was real responsibility in the British government, and sufficient security arising from the common law, declaration of rights, &c.; whereas, in this government, there was no barrier to stop their mad career. He hoped to obtain the amendments which his honorable friend had proposed.

Mr. MADISON. Mr. Chairman, I am persuaded that, when this power comes to be thoroughly and candidly viewed, it will be found right and proper. As to its extent, perhaps it will be satisfactory to the committee that the power is, precisely, in the new Constitution as it is in the Confederation. In the existing confederacy, Congress are authorized indefinitely to make treaties. Many of the states have recognized the treaties of Congress to be the supreme law of the land. Acts have passed, within a year, declaring this to be the case. I have seen many of them. Does it follow, because this power is given to Congress, that it is absolute and unlimited? I do not conceive that power is given to the President and Senate to dismember the empire, or to alienate any great, essential right. I do not think the whole legislative authority have this power. The exercise of the power must be consistent with the object of the delegation.

One objection against the amendment proposed is this, that, by implication, it would give power to the legislative authority to dismember the empire — a power that ought not to be given, but by the necessity that would force assent from every man. I think it rests on the safest foundation as it is. The object of treaties is the regulation of intercourse with foreign nations, and is external. I do not think it possible to enumerate all the cases in which such external regulations would be necessary. Would it be right to define all

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the cases in which Congress could exercise this authority. The definition might, and probably would, be defective They might be restrained, by such a definition, from exercising the authority where it would be essential to the interest and safety of the community. It is most safe, therefore, to leave it to be exercised as contingencies may arise.

It is to be presumed that, in transactions with foreign countries, those who regulate them will feel the whole force of national attachment to their country. The contrast being between their own nation and a foreign nation, is it not presumable they will, as far as possible, advance the interest of their own country? Would it not be considered as a dangerous principle in the British government were the king to have the same power in internal regulations as he has in the external business of treaties? Yet as, among other reasons, it is natural to suppose he will prefer the interest of his own to that of another country, it is thought proper to give him this external power of making treaties. This distinction is well worthy the consideration of gentlemen. I think the argument of the gentleman who restrained the supremacy of these to the laws of particular states, and not to Congress, is rational. Here the supremacy of a treaty is contrasted with the supremacy of the laws of the states. It cannot be otherwise supreme. If it does not supersede their existing laws, as far as they contravene its operation, it cannot be of any effect. To counteract it by the supremacy of the state laws, would bring on the Union the just charge of national perfidy, and involve us in war.

Suppose the king of Great Britain should make a treaty with France, where he had a constitutional right; if the treaty should require an internal regulation, and the Parliament should make a law to that effect, that law would be binding on the one, though not on the other nation. Suppose there should be a violation of right by the exercise of this power by the President and Senate; if there was apparent merit in it, it would be binding on the people; for where there is a power for any particular purpose, it must supersede what may oppose it, or else it can be no power. For instance, where there is a power of declaring war, that power, as to declaring war, supersedes every thing. This would be an unfortunate case, should it happen; but should it happen, there is a remedy; and there being a remedy, they will be restrained against abuses.

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But let us compare the responsibility in this government to that of the British government. If there be an abuse of this royal prerogative, the minister who advises him is liable to impeachment. This is the only restraint on the sovereign. Now, sir, is not the minister of the United States under restraint? Who is the minister? The President himself, who is liable to impeachment. He is responsible in person. But for the abuse of the power of the king, the responsibility is in his advisers. Suppose the Constitution had said, that this minister alone could make treaties, and, when he violated the interest of the nation, he would be impeached by the Senate; then the comparison would hold good between the two governments. But is there not an additional security by adding to him the representatives and guardians of the political interest of the states? If he should seduce a part of the Senate to a participation in his crimes, those who were not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterwards, when other members come into the Senate, one third being excluded every second year; so that there is a twofold security — the security of impeachment and conviction by those senators that may be innocent, should no more than one third be engaged with the President in the plot; and should there be more of them engaged in it, he may be tried and convicted by the succeeding senators, and the upright senators who were in the Senate before.

As to the case of the Russian ambassador, I shall say nothing. It is as inapplicable as many other quotations made by the gentleman. I conceive that, as far as the bills of rights in the states do not express any thing foreign to the nature of such things, and express fundamental principles essential to liberty, and those privileges which are declared necessary to all free people, these rights are not encroached on by this government. [Mr. Madison added other remarks. which could not be heard.]

Mr. CORBIN begged leave to explain what he had said He acknowledged that an act of Parliament passed, acknowledging the independence of America: but though there was nothing in that act respecting the Newfoundland fishery, and we were, by the treaty, to enjoy a right to that fishery unmolested, yet that part of the treaty was binding on the nation.

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After some desultory conversation, concerning the mode of considering the judiciary, the 1st and 2d sections of the 3d article were read.

Mr. PENDLETON. Mr. Chairman, on a former occasion, when I was considering the government at large, I mentioned the necessity of making a *judiciary* an essential part of the government. It is necessary, in order to arrest the executive arm, prevent arbitrary punishments, and give a fair trial, that the innocent may be guarded, and the guilty brought to just punishment, and that honesty and industry be protected, and injustice and fraud be prevented. Taking it for granted, then, that a judiciary is necessary, the power of that judiciary must be coëxtensive with the legislative power, and reach to all parts of society intended to be governed. They must be so arranged, that there must be some court which shall be the central point of their operations; and because all the business cannot be done in that part, there must be inferior courts to carry it on. The first clause contains an arrangement of the courts —one supreme, and such inferior as Congress may ordain and establish. This seems to me to be proper. Congress must be the judges, and may find reasons to change and vary them as experience shall dictate. It is, therefore, not only improper, but exceedingly inconvenient, to fix the arrangement in the Constitution itself, and not leave it to laws which may be changed according to circumstances. I think it highly probable that their first experiment will be, to appoint the state courts to have the inferior federal jurisdiction, because it would be best calculated to give general satisfaction, and answer economical purposes; since a small additional salary may in that case suffice, instead of competent provision for the judges. But even this eligible mode experience may furnish powerful reasons for changing, and a power to make such changes ought to rest with Congress. This clause also secures an important point —the independency of the judges, both as to tenure of offices and fixing of salary. I wish the restraint had been applied to increase as well as diminution.

The 2d section points out the subjects of their jurisdiction.

1. Cases arising under the Constitution.
2. the laws of the federal legislature
3. treaties made by them.

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4. All cases affecting ambassadors, ministers, and consuls.
5. All cases of maritime or admiralty jurisdiction.
6. Controversies wherein the United States shall be a party.
7. between two or more states.
8. between a state and citizens of another state.
9. between citizens of different states.
10. between citizens of the same state, claiming lands under grants of different states.
11. between a state, or its citizens, and foreign states, citizens, or subjects.

Without entering into a distinction of all its parts, I believe it will be found that they are all cases of general and not local concern. The necessity and propriety of a federal jurisdiction, in all such cases, must strike every gentleman.

The next clause settles the original jurisdiction of the Supreme Court, confining it to two cases — that of ambassadors, ministers, and consuls, and those in which a state shall be a party. It excludes its original jurisdiction in all other cases. But it appears to me that it will not restrain Congress from regulating even these, so as to permit foreign ambassadors to sue in the inferior courts, or even to compel them to do so, where their causes may be trivial, or they have no reason to expect a partial trial. Notwithstanding this jurisdiction is given to the Supreme Court, yet Congress may go farther by their laws, so as to exclude its original jurisdiction, by limiting the cases wherein it shall be exercised. They may require some satisfactory evidence that the party could not expect a fair trial in the inferior court. I am struck with this view, from considering that the legislature is not excluded, by the general jurisdiction in the Constitution, from regulating it, to accommodate the convenience of the people. Yet the legislature cannot extend its original jurisdiction, which is limited to these cases only.

The next branch brings me to the appellate jurisdiction. And first, I say it is proper and necessary, in all free governments, to allow appeals, under certain restrictions, in order to prevent injustice by correcting the erroneous decisions of local subordinate tribunals, and introduce uniformity in de-

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cision. The appellate jurisdiction is, therefore, undoubtedly proper, and would not have been objected to if they had not introduced, unfortunately, in this clause, the words "both as to law and fact." Though I dread no danger, I wish these words had been buried in oblivion. If they had, it would have silenced the greatest objections against the section. I will give my free and candid sentiments on it. We find them followed by words which remove a great deal of doubt — "with such exceptions, and under such regulations, as Congress shall make;" so that Congress may make such regulations as they may think conducive to the public convenience.

Let us consider the appellate jurisdiction if these words had been left out. The general jurisdiction must embrace decrees in chancery and admiralty, and judgments in courts of common law, in the ordinary practice of this appellate jurisdiction. When there is an appeal from the inferior court to the Court of Chancery, the appellate jurisdiction goes to law and fact, because the whole testimony appears in the record. The court proceeds to consider the circumstances of both law and fact blended together, and then decrees according to equity. This must be unexceptionable to every body. How is it in appeals from the admiralty? That court, except in some cases, proceeds as a court of chancery. In some cases they have trials by jury. But in most cases they proceed as in chancery. They consider all the circumstances, and determine as well what the fact, as what the law, is. When this goes to the superior court, it is determined the same way.

Appeals from the common-law courts involve the consideration of facts by the superior court, when there is a special verdict. They consider the fact and law together, and decide accordingly. But they cannot introduce new testimony. When a jury proceeds to try a cause in an inferior court, a question may arise on the competency of a witness, or some other testimony. The inferior court decides that question; it either admits or rejects that evidence. The party intending to object states the matter in a bill of exceptions. The jury then proceeds to try the cause, according to the judgment of the inferior court; and, on appeal, the superior court determines upon the judgment of the inferior court They do not touch the testimony. If they determine that

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the evidence was either improperly admitted or rejected, they set aside the judgment, and send back the cause to be tried again by a jury in the same court. These are the only cases, in appeals from inferior courts of common law, where the superior court can even consider facts incidentally. I feel the danger, as much as any gentleman in this committee, of carrying a party to the federal court, to have a trial there. But it appears to me that it will not be the case, if that be the practice which I have now stated; and that it is the practice must be admitted. The appeals may be limited to a certain sum. I make no doubt it will be so. You cannot prevent appeals without great inconveniences; but Congress can prevent that dreadful oppression which would enable many men to have a trial in the federal court, which is ruinous. There is a power which may be considered as a great security. The power of making what regulations and exceptions in appeals they may think proper may be so contrived as to render appeals, as to law and fact, proper, and perfectly inoffensive. How will this power be exercised? If I thought there was a possibility of danger, I should be alarmed.

But when I consider who this Congress are, — that they are the representatives of thirteen states, (which may become fourteen or fifteen, or a much greater number of states,) who cannot be interested, in the most remote degree, to subject their citizens to oppressions of that dangerous kind, but will feel the same inclination to guard their citizens from them, — I am not alarmed. I consider them as secured from it by the arrangement of these courts by Congress. To carry the citizens a great distance from their respective states can be of no advantage, but a great hardship to every state, except that wherein the seat of government may be. I conceive it probable that they will, as far as they may consistently with the national good, confine these cases. But when I cast my eyes to the Southern and Eastern States, every one of which is at a greater distance than we are, I cannot entertain a doubt but what this point will be perfectly secure. Every state being concerned almost equally, we have sufficient security that, when they come to organize the Supreme Court, they will regulate it so as to exclude this danger.

The fourth branch secures two important points in criminal cases — 1st, that the trial shall be by jury; 2d, that it

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shall be in the state where the offence is committed. It does not point out where it shall be within the state, or the more exact minutiæ respecting it; but laws will be made by which it will be regulated fully and minutely. I cannot conceive what motives they can have, in forming these trials, to render them oppressive. We have this security — that our citizens shall not be carried out of the state, and that no other trial can be substituted for that by jury.

[Mr. Pendleton made many other remarks; but he spoke too low to be comprehended distinctly.]

Mr. GEORGE MASON. Mr. Chairman, I had some hopes that the candor and reason of the warmest friends of this Constitution would have led them to point out objections so important. They must occur, more or less, to the mind of every one. It is with great reluctance I speak of this department, as it lies out of my line. I should not tell my sentiments upon it, did I not conceive it to be so constructed as to destroy the dearest rights of the community. After having read the first section, Mr. Mason asked, What is there left to the state courts? Will any gentleman be pleased, candidly, fairly, and without sophistry, to show us what remains? There is no limitation. It goes to every thing. The inferior courts are to be as numerous as Congress may think proper. They are to be of whatever nature they please. Read the 2d section, and contemplate attentively the extent of the jurisdiction of these courts, and consider if there be any limits to it.

I am greatly mistaken if there be any limitation whatsoever, with respect to the nature or jurisdiction of these courts. If there be any limits, they must be contained in one of the clauses of this section; and I believe, on a dispassionate discussion, it will be found that there is none of any check. All the laws of the United States are paramount to the laws and constitution of any single state. "The judicial power shall extend to all cases in law and equity arising under this Constitution." What objects will not this expression extend to? Such laws may be formed as will go to every object of private property. When we consider the nature of these courts, we must conclude that their effect and operation will be utterly to destroy the state governments; for they will be the judges how far their laws will operate. They are to modify their own

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courts, and you can make no state law to counteract them. The discrimination between their judicial power, and that of the states, exists, therefore, but in name. To what disgraceful and dangerous length does the principle of this go! For if your state judiciaries are not to be trusted with the administration of common justice, and decision of disputes respecting property between man and man, much less ought the state governments to be trusted with power of legislation. The principle itself goes to the destruction of the legislation of the states, whether or not it was intended. As to my own opinion, I most religiously and conscientiously believe that it was intended, though I am not absolutely certain. But I think it will destroy the state governments, whatever may have been the intention. There are many gentlemen in the United States who think it right that we should have one great, national, consolidated government, and that it was better to bring it about slowly and imperceptibly rather than all at once. This is no reflection on any man, for I mean none. To those who think that one national, consolidated government is best for America, this extensive judicial authority will be agreeable; but I hope there are many in this Convention of a different opinion, and who see their political happiness resting on their state governments. I know, from my own knowledge, many worthy gentlemen of the former opinion.

[Here Mr. Madison interrupted Mr. Mason, and demanded an unequivocal explanation. As these insinuations might create a belief that every member of the late federal Convention was of that opinion, he wished him to tell who the gentlemen were to whom he alluded.]

Mr. MASON then replied, I shall never refuse to explain myself. It is notorious that this is a prevailing principle. It was at least the opinion of many gentlemen in Convention, and many in the United States. I do not know what explanation the honorable gentleman asks. I can say, with great truth, that the honorable gentleman, in private conversation with me, expressed himself against it; neither did I ever hear any of the delegates from this state advocate it.

Mr. MADISON declared himself satisfied with this, unless the committee thought themselves entitled to ask a further explanation.

After some desultory remarks, Mr. MASON continued:

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I have heard that opinion advocated by gentlemen for whose abilities, judgment, and knowledge, I have the highest reverence and respect. I say that the general description of the judiciary involves the most extensive jurisdiction. Its cognizance, in all cases arising under the system and the laws of Congress, may be said to be unlimited. In the next place, it extends to treaties made, or which shall be made, under their authority. This is one of the powers which ought to be given them. I also admit that they ought to have judicial cognizance in all cases affecting ambassadors, foreign ministers and consuls, as well as in cases of maritime jurisdiction. There is an additional reason now to give them this last power; because Congress, besides the general powers, are about to get that of regulating commerce with foreign nations. This is a power which existed before, and is a proper subject of federal jurisdiction. The next power of the judiciary is also necessary under some restrictions. Though the decision of controversies to which the United States shall be a party may at first view seem proper, it may, without restraint, be extended to a dangerously oppressive length. The next, with respect to disputes between two or more states, is right. I cannot see the propriety of the next power, in disputes between a state and the citizens of another state. As to controversies between citizens of different states, their power is improper and inadmissible. In disputes between citizens of the same state, claiming lands under the grants of different states, the power is proper. It is the only case in which the federal judiciary ought to have appellate cognizance of disputes between private citizens. Unless this was the case, the suit must be brought and decided in one or the other state, under whose grant the lands are claimed, which would be injurious, as the decision must be consistent with the grant.

The last clause is still more improper. To give them cognizance in disputes between a state and the citizens thereof, is utterly inconsistent with reason or good policy.

Here Mr. NICHOLAS arose, and informed Mr. Mason that his interpretation of this part was not warranted by the words.

Mr. MASON replied, that, if he recollected rightly, the propriety of the power, as explained by him, had been contended for; but that, as his memory had never been

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good, and was now impaired much from his age, he would not insist on that interpretation. He then proceeded: Give me leave to advert to the operation of this judicial power. Its jurisdiction in the first case will extend to all cases affecting revenue, excise, and custom-house officers. If I am mistaken, I will retract. "All cases in law and equity arising under this Constitution, and the laws of the United States," take in all the officers of the government. They comprehend all those who act as collectors of taxes, excisemen, &c. It will take in, of course, what others do to them, and what is done by them to others. In what predicament will our citizens then be? We know the difficulty we are put in by our own courts, and how hard it is to bring officers to justice even in them. If any of the federal officers should be guilty of the greatest oppressions, or behave with the most insolent and wanton brutality to a man's wife or daughter, where is this man to get relief? If you suppose in the inferior courts, they are not appointed by the states. They are not men in whom the community can place confidence. It will be decided by federal judges. Even suppose the poor man should be able to obtain judgment in the inferior court, for the greatest injury, what justice can he get on appeal? Can he go four or five hundred miles? Can he stand the expense attending it? On this occasion they are to judge of fact as well as law. He must bring his witnesses where he is not known, where a new evidence may be brought against him, of which he never heard before, and which he cannot contradict.

The honorable gentleman who presides here has told us that the Supreme Court of appeals must embrace every object of maritime, chancery, and common-law controversy. In the two first, the indiscriminate appellate jurisdiction as to fact must be generally granted; because, otherwise, it could exclude appeals in those cases. But why not discriminate as to matters of fact with respect to common-law controversies? The honorable gentleman has allowed that it was dangerous, but hopes regulations will be made to suit the convenience of the people. But mere hope is not a sufficient security. I have said that it appears to me (though I am no lawyer) to be very dangerous. Give me leave to lay before the committee an amendment, which I think convenient, easy, and proper.

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[Here Mr. Mason proposed an alteration nearly the same as the first part of the fourteenth amendment recommended by the Convention which see at the conclusion.]

Thus, sir, said Mr. Mason, after limiting the cases in which the federal judiciary could interpose, I would confine the appellate jurisdiction to matters of law only, in common-law controversies.

It appears to me that this will remove oppressions, and answer every purpose of an appellate power.

A discrimination arises between common-law trials and trials in courts of equity and admiralty. In these two last, depositions are committed to record, and therefore, on an appeal, the whole fact goes up; the equity of the whole case, comprehending fact and law, is considered, and no new evidence requisite. Is it so in courts of common law? There evidence is only given *viva voce*. I know not a single case where there is an appeal of fact as to common law. But I may be mistaken. Where there is an appeal from an inferior to a superior court, with respect to matters of fact, a new witness may be introduced, who is perhaps suborned by the other party, a thousand miles from the place where the first trial was had. These are some of the inconveniences and insurmountable objections against this general power being given to the federal courts. Gentlemen will perhaps say there will be no occasion to carry up the evidence by *viva voce* testimony, because Congress may order it to be committed to writing, and transmitted in that manner with the rest of the record. It is true they may, but it is as true that they may not. But suppose they do; little conversant as I am in this subject, I know there is a great difference between *viva voce* evidence given at the bar, and testimony given in writing. I leave it to gentlemen more conversant in these matters to discuss it. They are also to have cognizance in controversies to which the United States shall be a party. This power is superadded, that there might be no doubt, and that all cases arising under the government might be brought before the federal court. Gentlemen will not, I presume, deny that all revenue and excise controversies, and all proceedings relative to the duties of the officers of government, from the highest to the lowest, may and must be brought by these means to the federal courts; in the first instance, to the inferior federal court, and afterwards to the

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superior court. Every fact proved with respect to these, in the court below, may be revived in the superior court. But this appellate jurisdiction is to be under the regulations of Congress. What these regulations may be, God only knows.

Their *jurisdiction* further extends to controversies between citizens of different states. Can we not trust our state courts with the decision of these? If I have a controversy with a man in Maryland, — if a man in Maryland has my bond for a hundred pounds, — are not the state courts competent to try it? Is it suspected that they would enforce the payment if unjust, or refuse to enforce it if just? The very idea is ridiculous. What! carry me a thousand miles from home — from my family and business — to where, perhaps, it will be impossible for me to prove that I paid it? Perhaps I have a respectable witness who saw me pay the money; but I must carry him one thousand miles to prove it, or be compelled to pay it again. Is there any necessity for this power? It ought to have no unnecessary or dangerous power. Why should the federal courts have this cognizance? Is it because one lives on one side of the Potomac, and the other on the other? Suppose I have your bond for a thousand pounds: if I have any wish to harass you, or if I be of a litigious disposition, I have only to assign it to a gentleman in Maryland. This assignment will involve you in trouble and expense. What effect will this power have between British creditors and the citizens of this state? This is a ground on which I shall speak with confidence. Every one, who heard me speak on the subject, knows that I always spoke for the payment of the British debts. I wish every honest debt to be paid. Though I would wish to pay the British creditor, yet I would not put it in his power to gratify private malice to our injury. Let me be put right if I be mistaken; but there is not, in my opinion, a single British creditor but can bring his debtors to the federal court.

There are a thousand instances where debts have been paid, and yet must, by this appellate cognizance, be paid again. Are these imaginary cases? Are they only possible cases, or are they certain and inevitable? "To controversies between a state and the citizens of another state." How will their jurisdiction in this case do? Let gentlemen look at the westward. Claims respecting those lands, every liquidated account, or other claim against this state, will be tried

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before the federal court. Is not this disgraceful? Is this state to be brought to the bar of justice like a delinquent individual? Is the sovereignty of the state to be arraigned like a culprit, or private offender? Will the states undergo this mortification? I think this power perfectly unnecessary. But let us pursue this subject farther. What is to be done if a judgment be obtained against a state? Will you issue a *fieri facias?* It would be ludicrous to say that you could put the state's body in jail. How is the judgment, then, to be enforced? A power which cannot be executed ought not to be granted.

Let us consider the operation of the last subject of its *cognizance.* "Controversies between a state, or the citizens thereof, and foreign states, citizens, or subjects." There is a confusion in this case. This much, however, may be raised out of it — that a suit will be brought against Virginia. She may be sued by a foreign state. What reciprocity is there in it? In a suit between Virginia and a foreign state, is the foreign state to be bound by the decision? Is there a similar privilege given to us in foreign states? Where will you find a parallel regulation? How will the decision be enforced? Only by the *ultima ratio regum.* A dispute between a foreign citizen or subject and a Virginian cannot be tried in our own courts, but must be decided in the federal court. Is this the case in any other country? Are not men obliged to stand by the laws of the country where the disputes are? This is an innovation which is utterly unprecedented and unheard-of. Cannot we trust the state courts with disputes between a Frenchman, or an Englishman, and a citizen; or with disputes between two Frenchmen? This is disgraceful; it will annihilate your state judiciary: it will prostrate your legislature.

Thus, sir, it appears to me that the greater part of these powers are unnecessary, and dangerous, as tending to impair, and ultimately destroy, the state judiciaries, and, by the same principle, the legislation of the state governments. To render it safe, there must be an amendment, such as I have pointed out. After mentioning the original jurisdiction of the Supreme Court, which extends to but three cases, it gives it appellate jurisdiction, in all other cases mentioned, both as to law and fact, indiscriminately and without limitation. Why not remove the cause of fear and danger?

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But it is said that the regulations of Congress will remove these. I say that, in my opinion, they will have a contrary effect, and will utterly annihilate your state courts. Who are the court? The judges. It is a familiar distinction. We frequently speak of a court in contradistinction from a jury. I think the court are to be the judges of this. The judges on the bench are to be judges of fact and law, with such exceptions, &c., as Congress shall make. Now, give me leave to ask, Is not a jury excluded absolutely? By way of illustration, were Congress to say that a jury, instead of a court, should judge the fact, will not the court be still judges of the fact consistently with this Constitution? Congress may make such a regulation, or may not. But suppose they do; what sort of a jury would they have in the ten miles square? I would rather, a thousand times, be tried by a court than by such a jury. This great palladium of national safety, which is secured to us by our own government, will be taken from us in those courts; or, if it be reserved, it will be but in name, and not in substance. In the government of Virginia, we have secured an impartial jury of the vicinage. We can except to jurors, and peremptorily challenge them in criminal trials. If I be tried in the federal court for a crime which may affect my life, have I a right of challenging or excepting to the jury? Have not the best men suffered by weak and partial juries? This sacred right ought, therefore, to be secured. I dread the ruin that will be brought on thirty thousand of our people, with respect to disputed lands. I am personally endangered as an inhabitant of the Northern Neck. The people of that part will be obliged, by the operation of this power, to pay the quitrent of their lands. Whatever other gentlemen may think, I consider this as a most serious alarm. It will little avail a man to make a profession of his candor. It is to his character and reputation they will appeal. Let gentlemen consider my public and private character. To these I wish gentlemen to appeal for an interpretation of my motives and views. Lord Fairfax's title was clear and undisputed. After the revolution, we taxed his lands as private property. After his death, an act of Assembly was made, in 1782, to sequester the quitrents due, at his death, in the hands of his debtors. Next year, an act was made restoring them to the executor of the proprietor. Subsequent to this, the trea-

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ty of peace was made, by which it was agreed that there should be no further confiscations. But, after this, an act of Assembly passed, confiscating his whole property. As Lord Fairfax's title was indisputably good, and as treaties are to be the supreme law of the land, will not his representatives be able to recover all in the federal court? How will gentlemen like to pay an additional tax on lands in the Northern Neck? This the operation of this system will compel them to do. They now are subject to the same tax that other citizens are; and if the quitrents be recovered in the federal court, they are doubly taxed. This may be called an assertion; but were I going to my grave, I would appeal to Heaven that I think it true. How will a poor man, who is injured or dispossessed unjustly, get a remedy? Is he to go to the federal court, seven or eight hundred miles? He might as well give his claim up. He may grumble, but, finding no relief, he will be contented.

Again, all that tract of country between the Blue Ridge and the Alleghany Mountains will be claimed, and probably recovered in the federal court, from the present possessors, by those companies who have a title to them. These *lands* have been sold to a great number of people. Many settled on them, on terms which were advertised. How will this be with respect to *ex post facto* laws? We have not only confirmed the title of those who made the contract, but those who did not, by a law, in 1779, on their paying the original price. Much was paid in a depreciated value, and much was not paid at all. Again, the great Indiana purchase, which was made to the westward, will, by this judicial power, be rendered a cause of dispute. The possessors may be ejected from those lands. That company paid a consideration of ten thousand pounds to the crown, before the lands were taken up. I have heard gentlemen of the law say (and I believe it is right) that, after the consideration was paid to the crown, the purchase was legally made, and ought to be valid. That company may come in, and show that they have paid the money, and have a full right to the land. Of the Indiana company I need not say much. It is well known that their claims will be brought before these courts. Three or four counties are settled on the land to which that company claims a title, and have long enjoyed it peaceably. All these claims before those courts, if they suc-

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ceed, will introduce a scene of distress and confusion never heard of before. Our peasants will be, like those mentioned by Virgil, reduced to ruin and misery, driven from their farms, and obliged to leave their country: —

"Nos patriam fugimus, et dulcia linquimus arva."

Having mentioned these things, give me leave to submit an amendment, which I think would be proper and safe, and would render our citizens secure in their possessions justly held. I mean, sir, "that the judicial power shall extend to no case where the cause of action shall have originated before the ratification of this Constitution, except in suits for debts due to the United States, disputes between states about their territory, and disputes between persons claiming lands under grants of different states." In these cases, there is an obvious necessity for giving it a retrospective power. I have laid before you my idea on the subject, and expressed my fears, which I most conscientiously believe to be well founded.

Mr. MADISON. Mr. Chairman, the honorable gentleman having persuaded himself that it was calculated to destroy the state governments, and to dispossess of their property so great a proportion of this commonwealth, I am not surprised at the opposition he has made. But, being equally persuaded that his fears are groundless, I will endeavor to refute his objections where they do not appear to me to be well founded. I shall be candid in my remarks. I acknowledge that this part does not stand in that form which would be freest from objection. It might be better expressed.

But, at the same time, truth obliges me to put a fair and liberal interpretation upon the words. I believe the general government will do what is for the interest of the United States; because they have no substantial reason or inducement to violate their duty, nor are they warranted by this part of the plan to commit the oppressions he dreads. The general policy of that clause is to prevent all occasions of having disputes with foreign powers, to prevent disputes between different states, and remedy partial decisions. I believe this to be wise and salutary. The lateness of the hour prevents my entering fully into the subject now. I shall reserve my answer to some other day. But I cannot sit down without adding a few words. He is displeased that

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there is no provision for peremptory challenges to juries There is no such provision made in our Constitution or laws The answer made by an honorable member lately is a full answer to this. He said, and with great propriety and truth, that where a technical word was used, all the incidents belonging to it necessarily attended it. The right of challenging is incident to the trial by jury, and therefore, as one is secured, so is the other. I hope gentlemen will see that the dangers he has pointed out do not necessarily follow.

FRIDAY, *June* 20, 1788.

[The 1st and 2d sections of the 3d article still under consideration.]

Mr. MADISON. Mr. Chairman, permit me to make a few observations, which may place this part in a more favorable light than the gentleman placed it in yesterday. It may be proper to remark that the organization of the general government for the United States was, in all its parts, very difficult. There was a peculiar difficulty in that of *the executive.* Every thing incident to it must have participated in that difficulty. That mode which was judged most expedient was adopted, till experience should point out one more eligible. This part was also attended with difficulties. It claims the indulgence of a fair and liberal interpretation. I will not deny that, according to my view of the subject, a more accurate attention might place it in terms which would exclude some of the objections now made to it. But if we take a liberal construction, I think we shall fmd nothing dangerous or inadmissible in it. In compositions of this kind, it is difficult to avoid technical terms which have the same meaning. An attention to this may satisfy gentlemen that precision was not so easily obtained as may be imagined. I will illustrate this by one thing in the Constitution. There is a general power to provide courts to try felonies and piracies committed on the high seas. *Piracy* is a word which may be considered as a term of the law of nations. *Felony* is a word unknown to the law of nations, and is to be found in the British laws, and from thence adopted in the laws of these states. It was thought dishonorable to have recourse to that standard. A technical term of the law of nations is therefore used, that we should find ourselves authorized to introduce it into the laws of the United States. The first question which I shall consider is, whether the subjects of

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its cognizance be proper subjects of a federal jurisdiction. The second will be, whether the provisions respecting it be consistent with safety and propriety, will answer the purposes intended, and suit local circumstances.

The first class of cases to which its jurisdiction extends are those which may arise under the Constitution; and this is to extend to equity as well as law. It may be a misfortune that, in organizing any government, the explication of its authority should be left to any of its coördinate branches. There is no example in any country where it is otherwise. There is a new policy in submitting it to the judiciary of the United States. That causes of a federal nature will arise, will be obvious to every gentleman who will recollect that the states are laid under restrictions, and that the rights of the Union are secured by these restrictions. They may involve equitable as well as legal controversies. With respect to the laws of the Union, it is so necessary and expedient that the judicial power should correspond with the legislative, that it has not been objected to. With respect to treaties, there is a peculiar propriety in the judiciary's expounding them.

These may involve us in controversies with foreign nations. It is necessary, therefore, that they should be determined in the courts of the general government. There are strong reasons why there should be a Supreme Court to decide such disputes. If, in any case, uniformity be necessary, it must be in the exposition of treaties. The establishment of one revisionary superintending power can alone secure such uniformity. The same principles hold with respect to cases affecting ambassadors and foreign ministers. To the same principles may also be referred their cognizance in admiralty and maritime cases. As our intercourse with foreign nations will be affected by decisions of this kind, they ought to be uniform. This can only be done by giving the federal judiciary exclusive jurisdiction. Controversies affecting the interest of the United States ought to be determined by their own judiciary, and not be left to partial, local tribunals.

The next case, where two or more states are the parties, is not objected to. Provision is made for this by the existing Articles of Confederation, and there can be no impropriety in referring such disputes to this tribunal.

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Its jurisdiction in controversies between a state and citizens of another state is much objected to, and perhaps without reason. It is not in the power of individuals to call any state into court. The only operation it can have, is that, if a state should wish to bring a suit against a citizen, it must be brought before the federal court. This will give satisfaction to individuals, as it will prevent citizens, on whom a state may have a claim, being dissatisfied with the state courts. It is a case which cannot often happen, and if it should be found improper, it will be altered. But it may be attended with good effects. This may be illustrated by other cases. It is provided, that citizens of different states may be carried to the federal courts.

But this will not go beyond the cases where they may be parties. A *femme covert* may be a citizen of another state, but cannot be a party in this court. A subject of a foreign power, having a dispute with a citizen of this state, may carry it to the federal court; but an alien enemy cannot bring suit at all. It appears to me that this can have no operation but this — to give a citizen a right to be heard in the federal courts; and if a state should condescend to be a party, this court may take cognizance of it.

As to its cognizance of disputes between citizens of different states, I will not say it is a matter of much importance. Perhaps it might be left to the state courts. But I sincerely believe this provision will be rather salutary than otherwise. It may happen that a strong prejudice may arise, in some states, against the citizens of others, who may have claims against them. We know what tardy, and even defective, administration of justice has happened in some states. A citizen of another state might not chance to get justice in a state court, and at all events he might think himself injured.

To the next clause there is no objection.

The next case provides for disputes between a foreign state and one of our states, should such a case ever arise; and between a citizen and a foreign citizen or subject. I do not conceive that any controversy can ever be decided, in these courts, between an American state and a foreign state, without the consent of the parties. If they consent, provision is here made. The disputes ought to be tried by the national tribunal. This is consonant to the law of nations. Could there be a more favorable or eligible provision to

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avoid controversies with foreign powers? Ought it to be put in the power of a member of the Union to drag the whole community into war? As the national tribunal is to decide, justice will be done. It appears to me, from this review, that though, on some of the subjects of this jurisdiction, it may seldom or never operate, and though others be of inferior consideration, yet they are mostly of great importance, and indispensably necessary.

The second question which I proposed to consider, was, whether such organization be made as would be safe and convenient for the states, and the people at large. Let us suppose that the subjects of its jurisdiction are only enumerated, and power given to the general legislature to establish such courts as might be judged necessary and expedient; do not think that, in that case, any rational objection could be made to it, any more than would be made to a general power of legislation in certain enumerated cases. If that would be safe, this appears to me better and more restrictive, so far as it may be abused by extension of power. The most material part is the discrimination of superior and inferior jurisdiction, and the arrangement of its powers; as, where it shall have original, and where appellate cognizance. Where it speaks of appellate jurisdiction, it expressly provides that such regulations will be made as will accommodate every citizen, so far as practicable in any government. The principal criticism which has been made, was against the appellate cognizance as well of fact as law. I am happy that the honorable member who presides, and who is familiarly acquainted with the subject, does not think it involves any thing unnecessarily dangerous. I think that the distinction of fact, as well as law, may be satisfied by the discrimination of the civil and common law. But if gentlemen should contend that appeals, as to fact, can be extended to jury cases, I contend that, by the word *regulations*, it is in the power of Congress to prevent it, or prescribe such a mode as will secure the privilege of jury trial. They may make a regulation to prevent such appeals entirely; or they may remand the fact, or send it to an inferior contiguous court, to be tried; or otherwise preserve that ancient and important trial.

Let me observe that, so far as the judicial power may extend to controversies between citizens of different states,

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and so far as it gives them power to correct, by another trial, a verdict obtained by local prejudices, it is favorable to those states which carry on commerce. There are a number of commercial states which carry on trade for other states. Should the states in debt to them make unjust regulations, the justice that would be obtained by the creditors might be merely imaginary and nominal. It might be either entirely denied, or partially granted. This is no imaginary evil. Before the war, New York was to a great amount a creditor of Connecticut. While it depended on the laws and regulations of Connecticut, she might withhold payment. If I be not misinformed, there were reasons to complain. These illiberal regulations and causes of complaint obstruct commerce. So far as this power may be exercised, Virginia will be benefited by it. It appears to me, from the most correct view, that, by the word *regulations*, authority is given them to provide against the inconveniences; and so far as it is exceptionable, they can remedy it. This they will do if they be worthy of the trust we put in them. I think them worthy of that confidence which that paper puts in them. Were I to select a power which might be given with confidence, it would be judicial power. This power cannot be abused, without raising the indignation of all the people of the states. I cannot conceive that they would encounter this odium. Leaving behind them their character and friends, and carrying with them local prejudices, I cannot think they would run such a risk. That men should be brought from all parts of the Union to the seat of government, on trivial occasions, cannot reasonably be supposed. It is a species of possibility; but there is every degree of probability against it. I would as soon believe that, by virtue of the power of collecting taxes or customs, they would compel every man to go and pay the money for his taxes, with his own hands, to the federal treasurer, as I would believe this. If they would not do the one, they would not the other.

I am of opinion (and my reasoning and conclusions are drawn from facts) that, as far as the power of Congress can extend, the judicial power will be accommodated to every part of America. Under this conviction I conclude that the legislation, instead of making the Supreme Federal Court absolutely stationary, will fix it in different parts of the con-

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tinent, to render it more convenient. I think this idea perfectly warrantable. There is an example, within our knowledge, which illustrates it. By the Confederation, Congress have an exclusive right of establishing rules for deciding, in all cases, what captures should be legal, and establishing courts for determining such cases finally. A court was established for that purpose, which was at first stationary. Experience, and the desire of accommodating the decision of this court to the convenience of the citizens of the different parts of America, had this effect — it soon became a regulation that this court should be held in different parts of America, and it was held accordingly. If such a regulation was made, when only the interest of the small number of people who are concerned with captures was affected, will not the public convenience be consulted, when that of a very considerable proportion of the people of America will be concerned? It will be also in the power of Congress to vest this power in the state courts, both inferior and superior. This they will do, when they find the tribunals of the states established on a good footing.

Another example will illustrate this subject further. By the Confederation, Congress are authorized to establish courts for trying piracies and felonies committed on the high seas. Did they multiply courts unnecessarily in this case? No, sir; they invested the admiralty courts of each state with this jurisdiction. Now, sir, if there will be as much sympathy between Congress and the people as now, we may fairly conclude that the federal cognizance will be vested in the local tribunals.

I have observed that gentlemen suppose that the general legislature will do every thing mischievous they possibly can, and that they will omit to do every thing good which they are authorized to do. If this were a reasonable supposition, their objections would be good. I consider it reasonable to conclude that they will as readily do their duty as deviate from it; nor do I go on the grounds mentioned by gentlemen on the other side — that we are to place unlimited confidence in them, and expect nothing but the most exalted integrity and sublime virtue. But I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched

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situation. No theoretical checks, no form of government, can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men; so that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.

Having taken this general view of the subject, I will now advert to what has fallen from the honorable gentleman who presides. His criticism is, that the judiciary has not been guarded from an increase of the salary of the judges. I wished myself to insert a restraint on the augmentation, as well as diminution, of their compensation, and supported it in the Convention. But I was overruled. I must state the reasons which were urged. They had great weight. The business must increase. If there was no power to increase their pay, according to the increase of business, during the life of the judges, it might happen that there would be such an accumulation of business as would reduce the pay to a most trivial consideration. This reason does not hold as to the President; for, in the short period in which he presides, this cannot happen. His salary ought not, therefore, to be increased. It was objected, yesterday, that there was no provision for a jury from the vicinage. If it could have been done with safety, it would not have been opposed. It might so happen that a trial would be impracticable in the country. Suppose a rebellion in a whole district; would it not be impossible to get a jury? The *trial by jury* is held as sacred in England as in America. There are deviations from it in England; yet greater deviations have happened here, since we established our independence, than have taken place there for a long time, though it be left to the legislative discretion. It is a misfortune in any case that this trial should be departed from; yet in some cases it is necessary. It must be, therefore, left to the discretion of the legislature to modify it according to circumstances. This is a complete and satisfactory answer.

It was objected, that this jurisdiction would extend to all cases, and annihilate the state courts. At this moment of time, it might happen that there are many disputes between citizens of different states. But in the ordinary state of

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things, I believe that any gentleman will think that the far greater number of causes — ninety-nine out of a hundred — will remain with the state judiciaries. All controversies directly between citizen and citizen will still remain with the local courts. The number of cases within the jurisdiction of these courts is very small when compared to those in which the local tribunals will have cognizance. No accurate calculation can be made; but I think that any gentleman who will contemplate the subject at all must be struck with this truth. [Here Mr. Madison spoke too low to be understood.]

As to vexatious appeals, they can be remedied by Congress. It would seldom happen that mere wantonness would produce such an appeal, or induce a man to sue unjustly. If the courts were on a good footing in the states, what can induce them to take so much trouble? I have frequently, in the discussion of this subject, been struck with one remark. It has been urged that this would be oppressive to those who, by imprudence or otherwise, come under the denomination of debtors. I know not how this can be conceived. I will venture one observation. If this system should have the effect of establishing universal justice, and accelerating it throughout America, it will be one of the most fortunate circumstances that could happen for those men. With respect to that class of citizens, compassion is their due. To those, however, who are involved in such encumbrances, relief cannot be granted. Industry and economy are the only resources. It is vain to wait for money, or temporize. The great *desiderata* are public and private confidence. No country in the world can do without them. Let the influx of money be ever so great, if there be no confidence, property will sink in value, and there will be no inducement or emulation to industry. The circulation of confidence is better than the circulation of money. Compare the situation of nations in Europe, where justice is administered with celerity, to that of those where it is refused, or administered tardily. Confidence produces the best effects in the former. The establishment of confidence will raise the value of property, and relieve those who are so unhappy as to be involved in debts. If this be maturely considered, I think it will be found that, as far as it will establish uniformity of justice, it will be of real advantage to such persons. I will not enter

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into those considerations which the honorable gentleman added. I hope some other gentleman will undertake to answer.

Mr. HENRY. Mr. Chairman, I have already expressed painful sensations at the surrender of our great rights, and I am again driven to the mournful recoellction. The purse is gone; the sword is gone; and here is the only thing of any importance that is to remain with us. As I think this is a more fatal defect than any we have yet considered, forgive me if I attempt to refute the observations made by the honorable member in the chair, and last up. It appears to me that the powers in the section before you are either impracticable, or, if reducible to practice, dangerous in the extreme.

The honorable gentleman began in a manner which surprised me. It was observed that our state judges might be contented to be federal judges and state judges also. If we are to be deprived of that class of men, and if they are to combine against us with the general government, we are gone.

I consider the Virginia judiciary as one of the best barriers against strides of power — against that power which, we are told by the honorable gentleman, has threatened the destruction of liberty. Pardon me for expressing my extreme regret that it is in their power to take away that barrier. Gentlemen will not say that any danger can be expected from the state legislatures. So small are the barriers against the encroachments and usurpations of Congress, that, when I see this last barrier — the independency of the judges — impaired, I am persuaded I see the prostration of all our rights. In what a situation will your judges be, when they are sworn to preserve the Constitution of the state and of the general government! If there be a concurrent dispute between them, which will prevail? They cannot serve two masters struggling for the same object. The laws of Congress being paramount to those of the states, and to their constitutions also, whenever they come in competition, the judges must decide in favor of the former. This, instead of relieving or aiding me, deprives me of my only comfort — the independency of the judges. The judiciary are the sole protection against a tyrannical execution of the laws. But if by this system we lose our judiciary, and they cannot help us, we must sit down quietly, and be oppressed.

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The appellate jurisdiction as to law and fact, notwithstanding the ingenuity of gentlemen, still, to me, carries those terrors which my honorable friend described. This does not include law, in the common acceptation of it, but goes to equity and admiralty, leaving what we commonly understand by common law out altogether. We are told of technical terms, and that we must put a liberal construction on it. We must judge by the common understanding of common men. Do the expressions "fact and law" relate to cases of admiralty and chancery jurisdiction only? No, sir, the least attention will convince us that they extend to common-law cases. Three cases are contradistinguished from the rest. "In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact." Now, sir, what are we to understand by these words? What are the cases before mentioned? Cases of common law, as well as of equity and admiralty. I confess I was surprised to hear such an explanation from an understanding more penetrating and acute than mine. We are told that the cognizance of law and fact is satisfied by cases of admiralty and chancery. The words are expressly against it. Nothing can be more clear and incontestable. This will, in its operation, destroy the trial by jury. The verdict of an impartial jury will be reversed by judges unacquainted with the circumstances. But we are told that Congress are to make regulations to remedy this. I may be told that I am bold; but I think myself, and I hope to be able to prove to others, that Congress cannot, by any act of theirs, alter this jurisdiction as established. It appears to me that no law of Congress can alter or arrange it. It is subject to be regulated, but is it subject to be abolished? If Congress alter this part, they will repeal the Constitution. Does it give them power to repeal itself? What is meant by such words in common parlance? If you are obliged to do certain business, you are to do it under such modifications as were originally designed. Can gentlemen support their argument by regular or logical conclusions? When Congress, by virtue of this sweeping clause, will organize these courts, they cannot depart from the Constitution; and their laws in

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opposition to the Constitution would be void. If Congress, under the specious pretence of pursuing this clause, altered it, and prohibited appeals as to fact, the federal judges, if they spoke the sentiments of independent men, would declare their prohibition nugatory and void. In every point of view, it seems to me that it will continue in as full force as it is now, notwithstanding any regulations they may attempt to make. What then, Mr. Chairman? We are told that, if this does not satisfy every mind, they will yield. It is not satisfactory to my mind, whatever it may be to others. The honorable gentleman has told us that our representatives will mend every defect. I do not know how often we have recurred to that source, but I can find no consolation in it. Who are they? Ourselves. What is their duty? To alter the spirit of the Constitution — to new model it? Is that their duty, or ours? It is our duty to rest our rights on a certain foundation, and not trust to future contingencies.

We are told of certain difficulties. I acknowledge it is difficult to form a constitution. But I have seen difficulties conquered which were as unconquerable as this. We are told that trial by jury is difficult to be had in certain cases. Do we not know the meaning of the term? We are also told it is a technical term. I see one thing in this Constitution; I made the observation before, and I am still of the same opinion, that every thing with respect to privileges is so involved in darkness, it makes me suspicious — not of those gentlemen who formed it, but of its operations in its present form. Could not precise terms have been used? You find, by the observations of the gentleman last up, that, when there is a plenitude of power, there is no difficulty; but when you come to a plain thing, understood by all America, there are contradictions, ambiguities, difficulties, and what not. Trial by jury is attended, it seems, with insuperable difficulties, and therefore omitted altogether in civil cases. But an idea is held out that it is secured in criminal cases. I had rather it had been left out altogether than have it so vaguely and equivocally provided for. Poor people do not understand technical terms. Their rights ought to be secured in language of which they know the meaning. As they do not know the meaning of such terms, they may be injured with impunity. If they dare oppose

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the hands of tyrannical power, you will see what has been practised elsewhere. They may be tried by the most partial powers, by their most implacable enemies, and be sentenced and put to death, with all the forms of a fair trial. I would rather be left to the judges. An abandoned juror would not dread the loss of character like a judge. From these, and a thousand other considerations, I would rather the trial by jury were struck out altogether. There is no right of challenging partial jurors. There is no common law of America, (as has been said,) nor constitution, but that on your table. If there be neither common law nor constitution, there can be no right to challenge partial jurors. Yet the right is as valuable as the trial by jury itself.

My honorable friend's remarks were right, with respect to incarcerating a state. It would ease my mind, if the honorable gentleman would tell me the manner in which money should be paid, if, in a suit between a state and individuals, the state were cast. The honorable gentleman, perhaps, does not mean to use coercion, but some gentle caution. I shall give my voice for the federal cognizance only where it will be for the public liberty and safety. Its jurisdiction, in disputes between citizens of different states, will be productive of the most serious inconveniences. The citizens of bordering states have frequent intercourse with one another. From the proximity of the states to each other, a multiplicity of these suits will be instituted. I beg gentlemen to inform me of this — in what courts are they to go and by what law are they to be tried? Is it by a law of Pennsylvania or Virginia? Those judges must be acquainted with all the laws of the different states. I see arising out of that paper a tribunal that is to be recurred to in all cases, when the destruction of the state judiciaries shall happen; and, from the extensive jurisdiction of these paramount courts, the state courts must soon be annihilated.

It may be remarked that here is presented to us that which is execrated in some parts of the states — I mean a retrospective law. This, with respect to property, is as odious as an *ex post facto* law is with respect to persons. I look upon them as one and the same thing. The jurisdiction of controversies between citizens, and foreign subjects and citizens, will operate retrospectively. Every thing with respect to the treaty with Great Britain and other nations

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will be involved by it. Every man who owes any thing to a subject of Great Britain, or any other nation, is subject to a tribunal that he knew not when he made the contract. Apply this to our citizens. If ever a suit be instituted by a British creditor for a sum which the defendant does not in fact owe, he had better pay it than appeal to the federal Supreme Court. Will gentlemen venture to ruin their own citizens? Foreigners may ruin every man in this state by unjust and vexatious suits and appeals. I need only touch it, to remind every gentleman of the danger.

No objection is made to their cognizance of disputes between citizens of the same state, claiming lands under grants of different states.

As to controversies between a state and the citizens of another state, his construction of it is to me perfectly incomprehensible. He says it will seldom happen that a state has such demands on individuals. There is nothing to warrant such an assertion. But he says that the state may be plaintiff only. If gentlemen pervert the most clear expressions, and the usual meaning of the language of the people, there is an end of all argument. What says the paper? That it shall have cognizance of controversies between a state and citizens of another state, without discriminating between plaintiff and defendant. What says the honorable gentleman? The contrary — that the state can only be plaintiff. When the state is debtor, there is no reciprocity. It seems to me that gentlemen may put what construction they please on it. What! is justice to be done to one party, and not to the other? If gentlemen take this liberty now, what will they not do when our rights and liberties are in their power? He said it was necessary to provide a tribunal when the case happened, though it would happen but seldom. The power is necessary, because New York could not, before the war, collect money from Connecticut! The state judiciaries are so degraded that they cannot be trusted. This is a dangerous power which is thus instituted. For what? For things which will seldom happen; and yet, because there is a possibility that the strong, energetic government may want it, it shall be produced and thrown in the general scale of power. I confess I think it dangerous. Is it not the first time, among civilized mankind, that there was a tribunal to try disputes between the aggregate society

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and foreign nations? Is there any precedent for a tribunal to try disputes between foreign nations and the states of America? The honorable gentleman said that the consent of the parties was necessary: I say that a previous consent might leave it to arbitration. It is but a kind of arbitration at best.

To hear gentlemen of such penetration make use of such arguments, to persuade us to part with that trial by jury, is very astonishing. We are told that we are to part with that trial by jury which our ancestors secured their lives and property with, and we are to build castles in the air, and substitute visionary modes of decision for that noble palladium. I hope we shall never be induced, by such arguments, to part with that excellent mode of trial. No appeal can now be made as to fact in common-law suits. The unanimous verdict of twelve impartial men cannot be reversed. I shall take the liberty of reading to the committee the sentiments of the learned Judge Blackstone, so often quoted, on the subject.

[Here Mr. Henry read the eulogium of that writer on this trial. *Blackstone's Commentaries*, iii. 319.]

The opinion of this learned writer is more forcible and cogent than any thing I could say. Notwithstanding the transcendent excellency of this trial, its essentiality to the preservation of liberty, and the extreme danger of substituting any other mode, yet we are now about to alienate it.

But on this occasion, as on all others, we are admonished to rely on the wisdom and virtue of our rulers. We are told that the members from Georgia, New Hampshire, &c., will not dare to infringe this privilege; that, as it would excite the indignation of the people, they would not attempt it: that is, the enormity of the offence is urged as a security against its commission. It is so abominable that Congress will not exercise it. Shall we listen to arguments like these, when trial by jury is about to be relinquished? I beseech you to consider before you decide. I ask you, What is the value of that privilege? When Congress, in all the plenitude of their arrogance, magnificence, and power, can take it from you, will you be satisfied? Are we to go so far as to concede every thing to the virtue of Congress? Throw yourselves at once on their mercy; be no longer free than their virtue will predominate: if this will satisfy republican

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minds, there is an end of every thing. I disdain to hold any thing of any man. We ought to cherish that disdain. America viewed with indignation the idea of holding her rights of England. The Parliament gave you the most solemn assurances that they would not exercise this power Were you satisfied with their promises? No. Did you trust any man on earth? No. You answered that you disdained to hold your innate, indefeasible rights of any one. Now, you are called upon to give an exorbitant and most alarming power. The genius of my countrymen is the same now that it was then. They have the same feelings. They are equally martial and bold. Will not their answer therefore be the same? I hope that gentlemen will, on a fair investigation, be candid, and not on every occasion recur to the virtue of our representatives.

When deliberating on the relinquishment of the sword and purse, we have a right to some other reason than the possible virtue of our rulers. We are informed that the strength and energy of the government call for the surrender of this right. Are we to make our country strong by giving up our privileges? I tell you that, if you judge from reason, or the experience of other nations, you will find that your country will be great and respectable according as you will preserve this great privilege. It is prostrated by that paper. Juries from the vicinage being not secured, this right is in reality sacrificed. All is gone. And why? Because a rebellion may arise. Resistance will come from certain countries, and juries will come from the same countries.

I trust the honorable gentleman, on a better recollection, will be sorry for this observation. Why do we love this trial by jury? Because it prevents the hand of oppression from cutting you off. They may call any thing rebellion, and deprive you of a fair trial by an impartial jury of your neighbors. Has not your mother country magnanimously preserved this noble privilege upwards of a thousand years? Did she relinquish a jury of the vicinage because there was a possibility of resistance to oppression? She has been magnanimous enough to resist every attempt to take away this privilege. She has had magnanimity enough to rebel when her rights were infringed. That country had juries of hundredors for many generations. And shall Americans give up that which nothing could induce the English people

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to relinquish? The idea is abhorrent to my mind. There was a time when we should have spurned at it. This gives me comfort — that, as long as I have existence, my neighbors will protect me. Old as I am, it is probable I may yet have the appellation of *rebel*. I trust that I shall see congressional oppression crushed in embryo. As this government stands, I despise and abhor it. Gentlemen demand it, though it takes away the trial by jury in civil cases, and does worse than take it away in criminal cases. It is gone unless you preserve it now. I beg pardon for speaking so long. Many more observations will present themselves to the minds of gentlemen when they analyze this part. We find enough, from what has been said, to come to this conclusion — that it was not intended to have jury trials at all; because, difficult as it was, the name was known, and it might have been inserted. Seeing that appeals are given, in matters of fact, to the Supreme Court, we are led to believe that you must carry your witnesses an immense distance to the seat of government, or decide appeals according to the Roman law. I shall add no more, but that I hope that gentlemen will recollect what they are about to do, and consider that they are going to give up this last and best privilege.

Mr. PENDLETON. Mr. Chairman, before I enter upon the objections made to this part, I will observe that I should suppose, if there were any person in this audience who had not read this Constitution, or who had not heard what has been said, and should have been told that the trial by jury was intended to be taken away, he would be surprised to find, on examination, that there was no exclusion of it in civil cases, and that it was expressly provided for in criminal cases. I never could see such intention, or any tendency towards it. I have not heard any arguments of that kind used in favor of the Constitution. If there were any words in it which said that trial by jury should not be used, it would be dangerous. I find it secured in criminal cases, and that the trial is to be had in the state where the crime shall have been committed. It is strongly insisted that the privilege of challenging, or excepting to the jury, is not secured. When the Constitution says that the trial shall be by jury, does it not say that every incident will go along with it? I think the honorable gentleman was mistaken yesterday in his reasoning on the propriety of a jury from the vicinage.

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He supposed that a jury from the neighborhood is had from this view — that they should be acquainted with the personal character of the person accused. I thought it was with another view — that the jury should have some personal knowledge of the fact, and acquaintance with the witnesses, who will come from the neighborhood. How is it understood in this state? Suppose a man, who lives in Winchester, commits a crime at Norfolk; the jury to try him must come, not from Winchester, but from the neighborhood of Norfolk. *Trial by jury* is secured by this system in criminal cases, as are all the incidental circumstances relative to it. The honorable gentleman yesterday made an objection to that clause which says that the judicial power shall be vested in one Supreme Court, and such inferior courts as Congress may ordain and establish. He objects that there is an unlimited power of appointing inferior courts. I refer to that gentleman, whether it would have been proper to limit this power. Could those gentlemen who framed that instrument have extended their ideas to all the necessities of the United States, and seen every case in which it would be necessary to have an inferior tribunal? By the regulations of Congress, they may be accommodated to public convenience and utility. We may expect that there will be an inferior court in each state; each state will insist on it; and each, for that reason, will agree to it.

To show the impropriety of fixing the number of inferior courts, suppose our Constitution had confined the legislature to any particular number of inferior jurisdictions; there it would remain; nor could it be increased or diminished, as circumstances would render it necessary. But as it is, the legislature can by laws change it from time to time, as circumstances will require. What would have been the consequences to the western district, if the legislature had been restrained in this particular? The emigrations to that country rendered it necessary to establish a jurisdiction there equal in rank to the General Court in this part of the state. This was convenient to them, and could be no inconvenience to us. At the same time, the legislature did not lose sight of making every part of society subject to the supreme tribunal. An appeal was allowed to the Court of Appeals here. This was necessary. Has it produced any inconvenience? I have not seen any appeal from that court. Its organiza-

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tion has produced no inconvenience whatever. This proves that it is better to leave them unsettled, than fixed in the Constitution. With respect to the subjects of its jurisdiction, I consider them as being of a general and not local nature, and therefore as proper subjects of a federal court. I shall not enter into an examination of each part, but make some reply to the observations of the honorable gentleman.

His next objection was to the first two clauses — cases arising under the Constitution, and laws made in pursuance thereof. Are you to refer these to the state courts? Must not the judicial powers extend to enforce the federal laws, govern its own officers, and confine them to the line of their duty? Must it not protect them, in the proper exercise of duty, against all opposition, whether from individuals or state laws? No, say gentlemen, because the legislature may make oppressive laws, or partial judges may give them a partial interpretation. This is carrying suspicion to an extreme which tends to prove there should be no legislative or judiciary at all. The fair inference is, that oppressive laws will not be warranted by the Constitution, nor attempted by our representatives, who are selected for their ability and integrity, and that honest, independent judges will never admit an oppressive construction.

But, then, we are alarmed with the idea of its being a consolidated government. It is so, say gentlemen, in the executive and legislative, and must be so in the judiciary. I never conceived it to be a consolidated government, so as to involve the interest of all America. Of the two objects of judicial cognizance, one is general and national, and the other local. The former is given to the general judiciary, and the latter left for the local tribunals. They act in co-operation, to secure our liberty. For the sake of economy, the appointment of these courts might be in the state courts. I rely on an honest interpretation from independent judges. An honest man would not serve otherwise, because it would be to serve a dishonest purpose. To give execution to proper laws, in a proper manner, is their peculiar province. There is no inconsistency, impropriety, or danger, in giving the state judges the federal cognizance. Every gentleman who beholds my situation, my infirmity, and various other considerations, will hardly suppose I carry my view to an accumulation of power. Ever since I had any power, I was

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more anxious to discharge my duty than to increase my power.

The impossibility of calling a sovereign state before the jurisdiction of another sovereign state, shows the propriety and necessity of vesting this tribunal with the decision of controversies to which a state shall be a party.

But the principal objection of that honorable gentleman was, that jurisdiction was given it in disputes between citizens of different states. I think, in general, those decisions might be left to the state tribunals; especially as citizens of one state are declared to be citizens of all. I think it will, in general, be so left by the regulations of Congress. But may no case happen in which it may be proper to give the federal courts jurisdiction in such a dispute? Suppose a bond given by a citizen of Rhode Island to one of our citizens. The regulations of that state being unfavorable to the claims of the other states, if he is obliged to go to Rhode Island to recover it, he will be obliged to accept payment of one third, or less, of his money. He cannot sue in the Supreme Court, but he may sue in the federal inferior court; and on judgment to be paid one for ten, he may get justice by appeal. Is it an eligible situation? Is it just that a man should run the risk of losing nine tenths of his claim? Ought he not to be able to carry it to that court where unworthy principles do not prevail? Paper money and tender laws may be passed in other states, in opposition to the federal principle, and restriction of this Constitution, and will need jurisdiction in the federal judiciary, to stop its pernicious effects.

Where is the danger, in the case put, of malice producing an assignment of a bond to a citizen of a neighboring state — Maryland? I have before supposed that there would be an inferior federal court in every state. Now, this citizen of Maryland, to whom this bond is assigned, cannot sue out process from the supreme federal court to carry his debtor thither. He cannot carry him to Maryland. He must sue him in the inferior federal court in Virginia. He can only go farther by appeal. The creditor cannot appeal. He gets a judgment. An appeal can be had only on application of the defendant, who thus gains a privilege instead of an injury; so that the observation of the honorable gentleman is not well founded. It was said by the honorable gentle-

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man to-day, that no regulation Congress would make could prevent from applying to common-law cases matters of law and fact. In the construction of general words of this sort, they will apply concurrently to different purposes. We give them that distributive interpretation, and liberal explication, which will not make them mischievous; and if this can be done by a court, surely it can by a legislature. When it appears that the interpretation made by legislative bodies, in carrying acts into execution, is thus liberal and distributive, there is no danger here. The honorable gentleman was mistaken when he supposed that I said, in cases where the competency of evidence is questioned, the fact was to be changed in the superior court. I said, the fact was not at all to be affected. I described how the superior court was to proceed, and, when it settled that point, if another trial was necessary, they sent the cause back, and then it was tried again in the inferior court.

The honorable gentleman has proposed an amendment which he supposes would remove those inconveniences. I attended to it, and it gave great force to my opinion that it is better to leave it to be amended by the regulations of Congress. What is to be done in cases where juries have been introduced in the admiralty and chancery? In the admiralty, juries sometimes decide facts. Sometimes in chancery, when the judges are dissatisfied, from the want of testimony or other cause, they send it to be tried by a jury. When the jury determines, they settle it. Let the gentleman review his amendment. It strikes me forcibly that it would be better to leave it to Congress than to introduce amendments which would not answer. I mentioned yesterday that, from the situation of the states, appeals could not be abused. The honorable gentleman to-day said it was putting too much confidence in our agents and rulers. I leave it to all mankind, whether it be not a reasonable confidence. Will the representatives of any twelve states sacrifice their own interest, and that of their fellow-citizens, to answer no purpose? But suppose we should happen to be deceived; have we no security? So great is the spirit of America, that it was found sufficient to oppose the greatest power in the world. Will not the American spirit protect us against any danger from our own representatives? It being now late, I shall add no more.

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Mr. GEORGE MASON. Mr. Chairman, the objection I made, respecting the assignment of a bond from a citizen of this state to a citizen of another state, remains still in force. The honorable gentleman has said that there can be no danger, in the first instance, because it is not within the original jurisdiction of the Supreme Court; but that the suit must be brought in the inferior federal court of Virginia. He supposes there can never be an appeal, in this case, by the plaintiff, because he gets a judgment on his bond; and that the defendant alone can appeal, who therefore, instead of being injured, obtains a privilege. Permit me to examine the force of this. By means of a suit, on a real or fictitious claim, the citizens of the most distant states may be brought to the supreme federal court. Suppose a man has my bond for a hundred pounds, and a great part of it has been paid, and, in order fraudulently to oppress me, he assigns it to a gentleman in Carolina or Maryland. He then carries me to the inferior federal court. I produce my witness, and judgment is given in favor of the defendant. The plaintiff appeals, and carries me to the superior court, a thousand miles, and my expenses amount to more than the bond.

The honorable gentleman recommends to me to alter my proposed amendment. I would as soon take the advice of that gentleman as any other; but, though the regard which I have for him be great, I cannot assent on this great occasion.

There are not many instances of decisions by juries in the admiralty or chancery, because the facts are generally proved by depositions. When that is done, the fact, being ascertained, goes up to the superior court, as part of the record; so that there will be no occasion to revise that part.

Mr. JOHN MARSHALL. Mr. Chairman, this part of the plan before us is a great improvement on that system from which we are now departing. Here are tribunals appointed for *the decision of controversies* which were before either not at all, or improperly, provided for. That many benefits will result from this to the members of the collective society, every one confesses. Unless its organization be defective, and so constructed as to injure, instead of accommodating, the convenience of the people, it merits our approbation. After such a candid and fair discussion by those gentlemen who support it, — after the very able manner in

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which they have investigated and examined it,—I conceived it would be no longer considered as so very defective, and that those who opposed it would be convinced of the impropriety of some of their objections. But I perceive they still continue the same opposition. Gentlemen have gone on an idea that the federal courts will not determine the causes which may come before them with the same fairness and impartiality with which other courts decide. What are the reasons of this supposition? Do they draw them from the manner in which the judges are chosen, or the tenure of their office? What is it that makes us trust our judges? Their independence in office, and manner of appointment. Are not the judges of the federal court chosen with as much wisdom as the judges of the state governments? Are they not equally, if not more independent? If so, shall we not conclude that they will decide with equal impartiality and candor? If there be as much wisdom and knowledge in the United States as in a particular state, shall we conclude that the wisdom and knowledge will not be equally exercised in the selection of judges?

The principle on which they object to the federal jurisdiction seems, to me, to be founded on a belief that there will not be a fair trial had in those courts. If this committee will consider it fully, they will find it has no foundation, and that we are as secure there as any where else. What mischief results from some causes being tried there? Is there not the utmost reason to conclude that judges, wisely appointed, and independent in their office, will never countenance any unfair trial? What are the subjects of its jurisdiction? Let us examine them with an expectation that causes will be as candidly tried there as elsewhere, and then determine. The objection which was made by the honorable member who was first up yesterday (Mr. Mason) has been so fully refuted that it is not worth while to notice it. He objected to Congress having power to create a number of inferior courts, according to the necessity of public circumstances. I had an apprehension that those gentlemen who placed no confidence in Congress would object that there might be no inferior courts. I own that I thought those gentlemen would think there would be no inferior courts, as it depended on the will of Congress, but that we should be dragged to the centre of the Union. But I did

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not conceive that the power of increasing the number of courts could be objected to by any gentleman, as it would remove the inconvenience of being dragged to the centre of the United States. I own that the power of creating a number of courts is, in my estimation, so far from being a defect, that it seems necessary to the perfection of this system. After having objected to the number and mode, he objected to the subject matter of their cognizance. [Here Mr. Marshall read the 2d section.]

These, sir, are the points of *federal jurisdiction* to which he objects, with a few exceptions. Let us examine each of them with a supposition that the same impartiality will be observed there as in other courts, and then see if any mischief will result from them. With respect to its cognizance in all cases arising under the Constitution and the laws of the United States, he says that, the laws of the United States being paramount to the laws of the particular states, there is no case but what this will extend to. Has the government of the United States power to make laws on every subject? Does he understand it so? Can they make laws affecting the mode of transferring property, or contracts, or claims, between citizens of the same state? Can they go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void. It will annihilate the state courts, says the honorable gentleman. Does not every gentleman here know that the causes in our courts are more numerous than they can decide, according to their present construction? Look at the dockets. You will find them crowded with suits, which the life of man will not see determined. If some of these suits be carried to other courts, will it be wrong? They will still have business enough.

Then there is no danger that particular subjects, small in proportion, being taken out of the jurisdiction of the state judiciaries, will render them useless and of no effect. Does the gentleman think that the state courts will have no cognizance of cases not mentioned here? Are there any words in this Constitution which exclude the courts of the states from those cases which they now possess? Does the

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gentleman imagine this to be the case? Will any gentleman believe it? Are not controversies respecting lands claimed under the grants of different states the only controversies between citizens of the same state which the federal judiciary can take cognizance of? The case is so clear, that to prove it would be a useless waste of time. The state courts will not lose the jurisdiction of the causes they now decide. They have a concurrence of jurisdiction with the federal courts in those cases in which the latter have cognizance.

How disgraceful is it that the state courts cannot be trusted! says the honorable gentleman. What is the language of the Constitution? Does it take away their jurisdiction? Is it not necessary that the federal courts should have cognizance of cases arising under the Constitution, and the laws, of the United States? What is the service or purpose of a judiciary, but to execute the laws in a peaceable, orderly manner, without shedding blood, or creating a contest, or availing yourselves of force? If this be the case, where can its jurisdiction be more necessary than here?

To what quarter will you look for protection from an infringement on the Constitution, if you will not give the power to the judiciary? There is no other body that can afford such a protection. But the honorable member objects to it, because he says that the officers of the government will be screened from merited punishment by the federal judiciary. The federal sheriff, says he, will go into a poor man's house and beat him, or abuse his family, and the federal court will protect him. Does any gentleman believe this? Is it necessary that the officers will commit a trespass on the property or persons of those with whom they are to transact business? Will such great insults on the people of this country be allowable? Were a law made to authorize them, it would be void. The injured man would trust to a tribunal in his neighborhood. To such a tribunal he would apply for redress, and get it. There is no reason to fear that he would not meet that justice there which his country will be ever willing to maintain. But, *on appeal*, says the honorable gentleman, what chance is there to obtain justice? This is founded on an idea that they will not be impartial. There is no clause in the Constitution which bars the individual member injured from applying to the state courts to give him redress. He says that there is no instance of appeals as to fact in common-law cases. The contrary is well

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known to you, Mr. Chairman, to be the case in this commonwealth. With respect to mills, roads, and other cases, appeals lie from the inferior to the superior court, as to fact as well as law. Is it a clear case, that there can be no case in common law in which an appeal as to fact might be proper and necessary? Can you not conceive a case where it would be productive of advantages to the people at large to submit to that tribunal the final determination, involving facts as well as law? Suppose it should be deemed for the convenience of the citizens that those things which concerned foreign ministers should be tried in the inferior courts; if justice could be done, the decision would satisfy all. But if an appeal in matters of facts could not be carried to the superior court, then it would result that such cases could not be tried before the inferior courts, for fear of injurious and partial decisions.

But, sir, where is the necessity of discriminating between the three cases of chancery, admiralty, and common law? Why not leave it to Congress? Will it enlarge their powers? Is it necessary for them wantonly to infringe your rights? Have you any thing to apprehend, when they can in no case abuse their power without rendering themselves hateful to the people at large? When this is the case, something may be left to the legislature freely chosen by ourselves, from among ourselves, who are to share the burdens imposed upon the community, and who can be changed at our pleasure. Where power may be trusted, and there is no motive to abuse it, it seems to me to be as well to leave it undetermined as to fix it in the Constitution.

With respect to disputes between *a state and the citizens of another state*, its jurisdiction has been decried with unusual vehemence. I hope that no gentleman will think that a state will be called at the bar of the federal court. Is there no such case at present? Are there not many cases in which the legislature of Virginia is a party, and yet the state is not sued? It is not rational to suppose that the sovereign power should be dragged before a court. The intent is, to enable states to recover claims of individuals residing in other states. I contend this construction is warranted by the words. But, say they, there will be partiality in it if a state cannot be defendant — if an individual cannot proceed to obtain judgment against a state, though he may be sued

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by a state. It is necessary to be so, and cannot be avoided. I see a difficulty in making a state defendant, which does not prevent its being plaintiff. If this be only what cannot be avoided, why object to the system on that account? If an individual has a just claim against any particular state, is it to be presumed that, on application to its legislature, he will not obtain satisfaction? But how could a state recover any claim from a citizen of another state, without the establishment of these tribunals?

The honorable member objects to suits being instituted in the federal courts, by the citizens of one state, against the citizens of another state. Were I to contend that this was necessary in all cases, and that the government without it would be defective, I should not use my own judgment. But are not the objections to it carried too far? Though it may not in general be absolutely necessary, a case may happen, as has been observed, in which a citizen of one state ought to be able to recur to this tribunal, to recover a claim from the citizen of another state. What is the evil which this can produce? Will he get more than justice there? The independence of the judges forbids it. What has he to get? Justice. Shall we object to this, because the citizen of another state can obtain justice without applying to our state courts? It may be necessary with respect to the laws and regulations of commerce, which Congress may make. It may be necessary in cases of debt, and some other controversies. In claims for land, it is not necessary, but it is not dangerous. In the court of which state will it be instituted? said the honorable gentleman. It will be instituted in the court of the state where the defendant resides, where the law can come at him, and nowhere else. By the laws of which state will it be determined? said he. By the laws of the state where the contract was made. According to those laws, and those only, can it be decided. Is this a novelty? No; it is a principle in the jurisprudence of this commonwealth. If a man contracted a debt in the East Indies, and it was sued for here, the decision must be consonant to the laws of that country. Suppose a contract made in Maryland, where the annual interest is at six per centum, and a suit instituted for it in Virginia; what interest would be given now, without any federal aid? The interest of Maryland most certainly; and if the contract

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had been made in Virginia, and suit brought in Maryland, the interest of Virginia must be given, without doubt. It is now to be governed by the laws of that state where the contract was made. The laws which governed the contract at its formation govern it in its decision. To preserve the peace of the Union only, its jurisdiction in this case ought to be recurred to. Let us consider that, when citizens of one state carry on trade in another state, much must be due to the one from the other, as is the case between North Carolina and Virginia. Would not the refusal of justice to our citizens, from the courts of North Carolina, produce disputes between the states? Would the federal judiciary swerve from their duty in order to give partial and unjust decisions?

The objection respecting the assignment of a bond to a citizen of another state has been fully answered. But suppose it were to be tried, as he says; what would be given more than was actually due in the case he mentioned? It is *possible* in our courts, as they now stand, to obtain a judgment for more than justice. But the court of chancery grants relief. Would it not be so in the federal court? Would not depositions be taken to prove the payments, and if proved, would not the decision of the court be accordingly?

He objects, in the next place, to its jurisdiction in controversies between a state and a foreign state. Suppose, says he, in such a suit, a foreign state is cast; will she be bound by the decision? If a foreign state brought a suit against the commonwealth of Virginia, would she not be barred from the claim if the federal judiciary thought it unjust? The previous consent of the parties is necessary; and, as the federal judiciary will decide, each party will acquiesce. It will be the means of preventing disputes with foreign nations. On an attentive consideration of these points, I trust every part will appear satisfactory to the committee.

The exclusion of trial by jury, in this case, he urged to prostrate our rights. Does the word *court* only mean the judges? Does not the determination of a jury necessarily lead to the judgment of the court? Is there any thing here which gives the judges exclusive jurisdiction of matters of fact? What is the object of a jury trial? To inform the court of the facts. When a court has cognizance of facts,

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does it not follow that they can make inquiry by a jury? It is impossible to be otherwise. I hope that in this country, where impartiality is so much admired, the laws will direct facts to be ascertained by a jury. But, says the honorable gentleman, the juries in the ten miles square will be mere tools of parties, with which he would not trust his person or property; which, he says, he would rather leave to the court. Because the government may have a district of ten miles square, will no man stay there but the tools and officers of the government? Will nobody else be found there? Is it so in any other part of the world, where a government has legislative power? Are there none but officers, and tools of the government of Virginia, in Richmond? Will there not be independent merchants, and respectable gentlemen of fortune, within the ten miles square? Will there not be worthy farmers and mechanics? Will not a good jury be found there, as well as any where else? Will the officers of the government become improper to be on a jury? What is it to the government whether this man or that man succeeds? It is all one thing. Does the Constitution say that juries shall consist of officers, or that the Supreme Court shall be held in the ten miles square? It was acknowledged, by the honorable member, that it was secure in England. What makes it secure there? Is it their constitution? What part of their constitution is there that the Parliament cannot change? As the preservation of this right is in the hands of Parliament, and it has ever been held sacred by them, will the government of America be less honest than that of Great Britain? Here a restriction is to be found. The jury is not to be brought out of the state. There is no such restriction in that government; for the laws of Parliament decide every thing respecting it. Yet gentlemen tell us that there is safety there, and nothing here but danger. It seems to me that the laws of the United States will generally secure trials by a jury of the vicinage, or in such manner as will be most safe and convenient for the people.

But it seems that the right of challenging the jurors is not secured in this Constitution. Is this done by our own Constitution, or by any provision of the English government? Is it done by their Magna Charta, or bill of rights? This privilege is founded on their laws. If so, why should it be objected to the American Constitution, that it is not inserted

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in it? If we are secure in Virginia without mentioning it in our Constitution, why should not this security be found in the federal court?

The honorable gentleman said much about the quitrents in the Northern Neck. I will refer it to the honorable gentleman himself. Has he not acknowledged that there was no complete title? Was he not satisfied that the right of the legal representatives of the proprietor did not exist at the time he mentioned? If so, it cannot exist now. I will leave it to those gentlemen who come from that quarter. I trust they will not be intimidated, on this account, in voting on this question. A law passed in 1782, which secures this. He says that many poor men may be harassed and injured by the representatives of Lord Fairfax. If he has no right, this cannot be done. If he has this right, and comes to Virginia, what laws will his claims be determined by? By those of this state. By what tribunals will they be determined? By our state courts. Would not the poor man, who was oppressed by an unjust prosecution, be abundantly protected and satisfied by the temper of his neighbors, and would he not find ample justice? What reason has the honorable member to apprehend partiality or injustice? He supposes that, if the judges be judges of both the federal and state courts, they will incline in favor of one government. If such contests should arise, who could more properly decide them than those who are to swear to do justice? If we can expect a fair decision any where, may we not expect justice to be done by the judges of both the federal and state governments? But, says the honorable member, laws may be executed tyrannically. Where is the independency of your judges? If a law be exercised tyrannically in Virginia, to what can you trust? To your judiciary. What security have you for justice? Their independence. Will it not be so in the federal court?

Gentlemen ask, What is meant by law cases, and if they be not distinct from facts? Is there no law arising on cases of equity and admiralty? Look at the acts of Assembly. Have you not many cases where law and fact are blended? Does not the jurisdiction in point of law as well as fact, find itself completely satisfied in law and fact? The honorable gentleman says that no law of Congress can make any exception to the federal appellate jurisdiction of facts as well as

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law. He has frequently spoken of technical terms, and the meaning of them. What is the meaning of the term *exception?* Does it not mean an alteration and diminution? Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact, of the Supreme Court. These exceptions certainly go as far as the legislature may think proper for the interest and liberty of the people. Who can understand this word, *exception*, to extend to one case as well as the other? I am persuaded that a reconsideration of this case will convince the gentleman that he was mistaken. This may go to the cure of the mischief apprehended. Gentlemen must be satisfied that this power will not be so much abused as they have said.

The honorable member says that he derives no consolation from the wisdom and integrity of the legislature, because we call them to rectify defects which it is our duty to remove. We ought well to weigh the good and evil before we determine. We ought to be well convinced that the evil will be really produced before we decide against it. If we be convinced that the good greatly preponderates, though there be small defects in it, shall we give up that which is really good, when we can remove the little mischief it may contain, in the plain, easy method pointed out in the system itself?

I was astonished when I heard the honorable gentleman say that he wished the trial by jury to be struck out entirely. Is there no justice to be expected by a jury of our fellow-citizens? Will any man prefer to be tried by a court, when the jury is to be of his countrymen, and probably of his vicinage? We have reason to believe the regulations with respect to juries will be such as shall be satisfactory. Because it does not contain all, does it contain nothing? But I conceive that this committee will see there is safety in the case, and that there is no mischief to be apprehended.

He states a case, that a man may be carried from a federal to an anti-federal corner, (and *vice versa*) where men are ready to destroy him. Is this probable? Is it presumable that they will make a law to punish men who are of different opinions in politics from themselves? Is it presumable that they will do it in one single case, unless it be such a case as must satisfy the people at large? The good opinion of the people at large must be consulted by their representatives; otherwise, mischiefs would be produced which would

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shake the government to its foundation. As it is late, I shall not mention all the gentleman's argument, but some parts of it are so glaring that I cannot pass them over in silence. He says that the establishment of these tribunals, and more particularly in their jurisdiction of controversies between citizens of these states and foreign citizens and subjects, is like a retrospective law. Is there no difference between a tribunal which shall give justice and effect to an existing right, and creating a right that did not exist before? The debt or claim is created by the individual. He has bound himself to comply with it. Does the creation of a new court amount to a retrospective law?

We are satisfied with the provision made in this country on the subject of trial by jury. Does our Constitution direct trials to be by jury? It is required in our bill of rights, which is not a part of the Constitution. Does any security arise from hence? Have you a jury when a judgment is obtained on a replevin bond, or by default? Have you a jury when a motion is made for the commonwealth against an individual; or when a motion is made by one joint obligor against another, to recover sums paid as security? Our courts decide in all these cases, without the intervention of a jury; yet they are all civil cases. The bill of rights is merely recommendatory. Were it otherwise, the consequence would be that many laws which are found convenient would be unconstitutional. What does the government before you say? Does it exclude the legislature from giving a trial by jury in civil cases? If it does not forbid its exclusion, it is on the same footing on which your state government stands now. The legislature of Virginia does not give a trial by jury where it is not necessary, but gives it wherever it is thought expedient. The federal legislature will do so too, as it is formed on the same principles.

The honorable gentleman says that unjust claims will be made, and the defendant had better pay them than go to the Supreme Court. Can you suppose such a disposition in one of your citizens, as that, to oppress another man, he will incur great expenses? What will he gain by an unjust demand? Does a claim establish a right? He must bring his witnesses to prove his claim. If he does not bring his witnesses, the expenses must fall upon him. Will he go on a calculation that the defendant will not defend it, or cannot

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produce a witness? Will he incur a great deal of expense, from a dependence on such a chance? Those who know human nature, black as it is, must know that mankind are too well attached to their interest to run such a risk. I conceive that this power is absolutely necessary, and not dangerous; that, should it be attended by little inconveniences, they will be altered, and that they can have no interest in not altering them. Is there any real danger? When I compare it to the exercise of the same power in the government of Virginia, I am persuaded there is not. The federal government has no other motive, and has every reason for doing right which the members of our state legislature have. Will a man on the eastern shore be sent to be tried in Kentucky, or a man from Kentucky be brought to the eastern shore to have his trial? A government, by doing this, would destroy itself. I am convinced the trial by jury will be regulated in the manner most advantageous to the community.

Gov. RANDOLPH declared that the faults which he once saw in this system he still perceived. It was his purpose, he said, to inform the committee in what his objections to this part consisted. He confessed some of the objections against the judiciary were merely chimerical; but some of them were real, which his intention of voting in favor of adoption would not prevent him from developing.

SATURDAY, *June* 21, 1788.

Mr. HARRISON reported, from the committee on privileges and elections, that the committee had, according to order, had under their further consideration the petition of Mr. Richard Morris, complaining of an undue election and return of William White, as a delegate to serve in this Convention for the county of Louisa, and had agreed upon a report, and come to several resolutions thereupon, resulting as follows — on motion, ordered, that the committee of privileges and elections be discharged from further proceeding on the petition of Richard Morris, and that the petitioner have leave to withdraw the same.

[The 1st and 2d sections of the 3d article still under consideration.]

Mr. GRAYSON. Mr. Chairman, it seems to have been a rule with the gentlemen on the other side to argue from the excellency of human nature, in order to induce us to

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grant away (if I may be allowed the expression) the rights and liberties of our country. I make no doubt the same arguments were used on a variety of occasions. I suppose, sir, that this argument was used when Cromwell was invested with power. The same argument was used to gain our assent to the stamp act. I have no doubt it has been invariably the argument in all countries, when the concession of power has been in agitation. But power ought to have such checks and limitations as to prevent bad men from abusing it. It ought to be granted on a supposition that men will be bad; for it may be eventually so. With respect to the judiciary, my grand objection is, that it will interfere with the state judiciaries, in the same manner as the exercise of the power of direct taxation will interfere with the same power in the state governments; there being no superintending central power to keep in order these two contending jurisdictions. This is an objection which is unanswerable in its nature.

In England they have great courts, which have great and interfering powers. But the controlling power of Parliament, which is a *central focus*, corrects them. But here each party is to shift for itself. There is no arbiter or power to correct their interference. Recurrence can be only had to the sword. I shall endeavor to demonstrate the pernicious consequences of this interference. It was mentioned, as one reason why these great powers might harmonize, that the judges of the state courts might be federal judges. The idea was approbated, in my opinion, with a great deal of justice. They are the best check we have. They secure us from encroachments on our privileges. They are the principal defence of the states. How improper would it be to deprive the state of its only defensive armor! I hope the states will never part with it. There is something extremely disgraceful in the idea. How will it apply in the practice? The independent judges of Virginia are to be subordinate to the federal judiciary. Our judges in chancery are to be judges in the inferior federal tribunals. Something has been said of the independency of the federal judges. I will only observe that it is on as corrupt a basis as the art of man can place it. The *salaries of the judges* may be augmented. Augmentation of salary is the only method that can be taken to corrupt a judge.

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It has been a thing desired by the people of England for many years, that the judges should be *independent*. This independency never was obtained till the second or third year of the reign of George III. It was omitted at the revolution by inattention. Their compensation is now fixed, and they hold their offices during good behavior. But I say that our federal judges are placed in a situation as liable to corruption as they could possibly be. How are judges to be operated upon? By the hopes of reward, and not the fear of a diminution of compensation. *Common decency* would prevent lessening the salary of a judge. Throughout the whole page of history, you will find the corruption of judges to have always arisen from that principle — the hope of reward. This is left open here. The flimsy argument brought by my friend, not as his own, but as supported by others, will not hold. It would be hoped that the judges should get too much rather than too little, and that they should be perfectly independent. What if you give six hundred or a thousand pounds annually to a judge? It is but a trifling object, when, by that little money, you purchase the most invaluable blessing that any country can enjoy.

There is to be one *Supreme Court* — for chancery, admiralty, common pleas, and exchequer, (which great cases are left in England to four great courts,) to which are added criminal jurisdiction, and all cases depending on the law of nations — a most extensive jurisdiction. This court has more power than any court under heaven. One set of judges ought not to have this power — and judges, particularly, who have temptation always before their eyes. The court thus organized are to execute laws made by thirteen nations, dissimilar in their customs, manners, laws, and interests. If we advert to the customs of these different sovereignties, we shall find them repugnant and dissimilar. Yet they are all forced to unite and concur in making these laws. They are to form them on one principle, and on one idea, whether the civil law, common law, or law of nations. The gentleman was driven, the other day, to the expedient of acknowledging the necessity of having thirteen different tax laws. This destroys the principle, that he who lays a tax should feel it and bear his proportion of it. This has not been answered: it will involve consequences so absurd, that, I presume, they will not attempt to make thirteen dif-

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ferent codes. They will be obliged to make one code. How will they make one code, without being contradictory to some of the laws of the different states?

It is said there is to be *a court of equity*. There is no such thing in Pennsylvania, or in some other states in the Union. A nation, in making a law, ought not to make it repugnant to the spirit of the Constitution or the genius of the people. This rule cannot be observed in forming a general code. I wish to know how the people of Connecticut would agree with the lordly pride of your Virginia nobility. Its operation will be as repugnant and contradictory, in this case, as in the establishment of a court of equity. They may inflict punishments where the state governments will give rewards. This is not probable; but *still it is possible*. It would be a droll sight, to see a man on one side of the street punished for a breach of the federal law, and on the other side another man rewarded by the state legislature for the same act. Or suppose it were the same person that should be thus rewarded and punished at one time for the same act; it would be a droll sight, to see a man laughing on one side of his face, and crying on the other. I wish only to put this matter in a clear point of view; and I think that if thirteen states, different in every thing, shall have to make laws for the government of the whole, they cannot harmonize, or suit the genius of the people; there being no such thing as a spirit of laws, or a pervading principle, applying to every state individually. The only promise, in this respect, is, that there shall be a republican government in each state. But it does not say whether it is to be aristocratical or democratical.

My next objection to *the federal judiciary* is, that it is not expressed in a definite manner. The jurisdiction of all cases arising under the Constitution and the laws of the Union is of stupendous magnitude.

It is impossible for human nature to trace its extent. It is so vaguely and indefinitely expressed, that its latitude cannot be ascertained. Citizens or subjects of foreign states may sue citizens of the different states in the federal courts. It is extremely impolitic to place foreigners in a better situation than our own citizens. This was never the policy of other nations. It was the policy, in England, to put foreigners on a secure footing. The statute merchant and statute staple were favorable to them. But in no country are the

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laws more favorable to foreigners than to the citizens. If they be equally so, it is surely sufficient. Our own state merchants would be ruined by it, because they cannot recover debts so soon in the state courts as foreign merchants can recover of them in the federal courts. The consequence would be inevitable ruin to commerce. It will induce foreigners to decline becoming citizens. There is no reciprocity in it.

How will this apply to *British creditors?* I have ever been an advocate for paying the British creditors, both in Congress and elsewhere. But here we do injury to our own citizens. It is a maxim in law, that debts should be on the same original foundation they were on when contracted. I presume, when the contracts were made, the creditors had an idea of the state judiciaries only. The procrastination and delays of our courts were probably in contemplation by both parties. They could have no idea of the establishment of new tribunals to affect them. *Trial by jury* must have been in the contemplation of both parties, and the *venue* was in favor of the defendant. From these premises it is clearly discernible that it would be wrong to change the nature of the contracts. Whether they will make a law other than the state laws, I cannot determine.

But we are told that it is wise, politic, and preventive of controversies with foreign nations. The treaty of peace with Great Britain does not require that creditors should be put in a better situation than they were, but that there should be no hinderance to the collection of debts. It is therefore unwise and impolitic to give those creditors such an advantage over the debtors. But the citizens of different states are to sue each other in these courts. No reliance is to be put on the state judiciaries. The fear of unjust regulations and decisions in the states is urged as the reason of this jurisdiction. Paper money in Rhode Island has been instanced by gentlemen. There is one clause in the Constitution which prevents the issuing of paper money. If this clause should pass, (and it is unanimously wished by every one that it should not be objected to,) I apprehend an execution in Rhode Island would be as good and effective as in any state in the Union.

A state may sue a foreign state, or a foreign state may sue one of our states. This may form a *new*, American law of nations. Whence the idea could have originated, I cannot

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determine, unless from the idea that predominated in the time of Henry IV. and Queen Elizabeth. They took it into their heads to consolidate all the states in the world into one great political body. Many ridiculous projects were imagined to reduce that absurd idea into practice; but they were all given up at last. My honorable friend, whom I much respect, said that the consent of the parties must be previously obtained. I agree that the consent of foreign nations must be had before they become parties; but it is not so with our states. It is fixed in the Constitution that they shall become parties. This is not reciprocal. If the Congress cannot make a law against the Constitution, I apprehend they cannot make a law to abridge it. The judges are to defend it. They can neither abridge nor extend it. There is no recriprocity in this, that a foreign state should have a right to sue one of our states, whereas a foreign state cannot be sued without its own consent. The idea to me is monstrous and extravagant. It cannot be reduced to practice.

Suppose one of our states objects to the decision; arms must be recurred to. How can *a foreign state be compelled to submit to a decision?* Pennsylvania and Connecticut had like, once, to have fallen together concerning their contested boundaries. I was convinced that the mode provided in the Confederation, for the decision of such disputes, would not answer. The success which attended it, with respect to settling bounds, has proved to me, in some degree, that it would not answer in any other case whatever. The same difficulty must attend this mode in the execution. This high court has not a very extensive original jurisdiction. It is not material. But its appellate jurisdiction is of immense magnitude; and what has it in view, unless to subvert the state governments? The honorable gentleman who presides has introduced the high court of appeals. I wish the federal appellate court was on the same foundation. If we investigate the subject, we shall find this jurisdiction perfectly unnecessary. It is said that its object is to prevent subordinate tribunals from making unjust decisions, to defraud creditors. I grant the suspicion is in some degree just. But would not an appeal to the state courts of appeal, or supreme tribunals, correct the decisions of inferior courts? Would not this put every thing right? Then there would be no interference of jurisdiction.

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But a gentleman (Mr. Marshall) says, we ought certainly to give this power to Congress, because our state courts have more business than they can possibly do. A gentleman was once asked to give up his estate because he had too much; but he did not comply. Have we not established district courts, which have for their object the full administration of justice? Our courts of chancery might, by our legislature, be put in a good situation; so that there is nothing in this observation.

But the same honorable gentleman says, that trial by jury is preserved by implication. I think this was the idea. I beg leave to consider that, as well as other observations of the honorable gentleman. After enumerating the subjects of its jurisdiction, and confining its original cognizance to cases affecting ambassadors and other public ministers, and those in which a state shall be a party, it expressly says, that, "in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and *fact*." I would beg the honorable gentleman to turn his attention to the word *appeal*, which I think comprehends chancery, admiralty, common law, and every thing. But this is with such exceptions, and under such regulations, as Congress shall make. This, we are told, will be an ample security. Congress may please to make these exceptions and regulations, but they may not, also. I lay it down as a principle, that trial by jury is given up to the discretion of Congress. If they take it away, will it be a breach of this Constitution? I apprehend not; for, as they have an absolute appellate jurisdiction of facts, they may alter them as they may think proper. It is possible that Congress may regulate it properly; but still it is at their discretion to do it or not. There has been so much said of the excellency of the trial by jury, that I need not enlarge upon it. The want of trial by jury in the Roman republic obliged them to establish the regulation of *patron* and *client*. I think this must be the case in every country where this trial does not exist. The poor people were obliged to be defended by their *patrons*.

It may be laid down as a rule that, where the governing power possesses an unlimited control over the *venue*, no man's life is in safety. How is it in this system? "The trial of all crimes shall be by jury, except in cases of im-

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peachment; and such trial shall be held in the state where the said crimes shall have been committed." He has said that, when the power of a court is given, all its appendages and concomitants are given. Allowing this to be the case by implication, how is it? Does it apply to counties? No, sir. The idea is, that the states are to the general government as counties are to our state legislatures. What sort of a vicinage is given by Congress? The idea which I call a true vicinage is, that a man shall be tried by his neighbors. But the idea here is, that he may be tried in any part of the state. Were the *venue* to be established according to the federal districts, it would not come up to the true idea of vicinage. Delaware sends but one member: it would then extend to that whole state. This state sends ten members, and has ten districts; but this is far from the true idea of vicinage. The allusion another gentleman has made to this trial, as practised in England, is improper. It does not justify this regulation. The jury may come from any part of the state. They possess an absolute, uncontrollable power over the *venue*. The conclusion, then, is, that they can hang any one they please, by having a jury to suit their purpose. They might, on particular, extraordinary occasions, suspend the privilege. The Romans did it on creating a dictator. The British government does it when the *habeas corpus* is to be suspended — when the *salus populi* is affected. I never will consent to it unless it be properly defined.

Another gentleman has said that trial by jury has not been so sacred a thing among our ancestors, and that in England it may be destroyed by an act of Parliament. I believe the gentleman is mistaken. I believe it is secured by Magna Charta and the bill of rights. I believe no act of Parliament can affect it, if this principle be true, — that a law is not paramount to the constitution. I believe, whatever may be said of the mutability of the laws, and the defect of a written, fixed constitution, that it is generally thought, by Englishmen, that it is so sacred that no act of Parliament can affect it.

The interference of the federal judiciary and the state courts will involve the most serious and even ludicrous consequences. Both courts are to act on the same persons and things, and cannot possibly avoid interference. As to cor-

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nection or coalition, it would be incestuous. How could they avoid it, on an execution from each court, either against the body or effects? How will it be with respect to mortgaged property? Suppose the same lands or slaves mortgaged to two different persons, and the mortgages foreclosed, one in the federal and another in the state court; will there be no interference in this case? It will be impossible to avoid interference in a million of cases. I would wish to know how it can be avoided; for it is an insuperable objection in my mind. I shall no longer fatigue the committee, but shall beg leave to make some observations another time.

Gov. RANDOLPH. Mr. Chairman, I shall state to the committee in what cases the federal judiciary appears to me to deserve applause, and where it merits dispraise. It has not yet been denied that a federal judiciary is necessary to a certain extent. Every government necessarily involves a judiciary as a constituent part. If, then, a federal judiciary be necessary, what are the characters of its powers? That it shall be auxiliary to the federal government, support and maintain harmony between the United States and foreign powers, and between different states, and prevent a failure of justice in cases to which particular state courts are incompetent. If this judiciary be reviewed as relative to these purposes, I think it will be found that nothing is granted which does not belong to a federal judiciary. Self-defence is its first object. Has not the Constitution said that the states shall not use such and such powers, and given exclusive powers to Congress? If the state judiciaries could make decisions conformable to the laws of their states, in derogation to the general government, I humbly apprehend that the federal government would soon be encroached upon. If a particular state should be at liberty, through its judiciary, to prevent or impede the operation of the general government, the latter must soon be undermined. It is, then, necessary that its jurisdiction should "extend to all cases in law and equity arising under this Constitution and the laws of the United States."

Its next object is to perpetuate harmony between us and foreign powers. The general government, having the superintendency of the general safety, ought to be the judges how the United States can be most effectually secured and guarded against controversies with foreign nations. I presume,

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therefore, that treaties and cases affecting ambassadors, other public ministers, and consuls, and all those concerning foreigners, will not be considered as improper subjects for a federal judiciary. Harmony between the states is no less necessary than harmony between foreign states and the United States. Disputes between them ought, therefore, to be decided by the federal judiciary. Give me leave to state some instances which have actually happened, which prove to me the necessity of the power of deciding controversies between two or more states. The disputes between Connecticut and Pennsylvania, and Rhode Island and Connecticut, have been mentioned. I need not particularize these. Instances have happened in Virginia. There have been disputes respecting boundaries. Under the old government, as well as this, reprisals have been made by Pennsylvania and Virginia on one another. Reprisals have been made by the very judiciary of Pennsylvania on the citizens of Virginia. Their differences concerning their boundaries are not yet perhaps ultimately determined. The legislature of Virginia, in one instance, thought this power right. In the case of Mr. Nathan, they thought the determination of the dispute ought to be out of the state, for fear of partiality.

It is with respect to the rights of territory that the state judiciaries are not competent. If the claimants have a right to the territories claimed, it is the duty of a good government to provide means to put them in possession of them. If there be no remedy, it is the duty of the general government to furnish one.

Cases of admiralty and maritime jurisdiction cannot, with propriety, be vested in particular state courts. As our national tranquillity and reputation, and intercourse with foreign nations, may be affected by admiralty decisions; as they ought, therefore, to be uniform; and as there can be no uniformity if there be thirteen distinct, independent jurisdictions, — this jurisdiction ought to be in the federal judiciary. On these principles, I conceive the subjects themselves are proper for the federal judiciary.

Although I do not concur with the honorable gentleman that the judiciary is so formidable, yet I candidly admit that there are defects in its construction, among which may be objected too great an extension of jurisdiction. I cannot say, by any means, that its jurisdiction is free from fault,

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though I conceive the subjects to be proper. It is ambiguous in some parts, and unnecessarily extensive in others. It extends to all cases in law and equity arising under the Constitution. What are these cases of law and equity? Do they not involve all rights, from an inchoate right to a complete right, arising from this Constitution? Notwithstanding the contempt gentlemen express for technical terms, I wish such were mentioned here. I would have thought it more safe, if it had been more clearly expressed. What do we mean by the words *arising under the Constitution?* What do they relate to? I conceive this to be very ambiguous. If my interpretation be right, the word *arising* will be carried so far that it will be made use of to aid and extend the federal jurisdiction.

As to controversies between the citizens of different states, I am sure the general government will make provision to prevent men being harassed to the federal court. But I do not see any absolute necessity for vesting it with jurisdiction in these cases.

With respect to that part which gives *appellate jurisdiction*, both as to law and fact, I concur with the honorable gentleman who presides, that it is unfortunate, and my lamentation over it would be incessant, were there no remedy. I can see no reason for giving it jurisdiction with respect to fact as well as law; because we find, from our own experience, that appeals as to fact are not necessary. My objection would be unanswerable, were I not satisfied that it contains its own cure, in the following words: "with such exceptions and under such regulations as Congress shall make." It was insisted on by gentlemen that these words could not extend to law and fact, and that they could not separate the fact from the law. This construction is irrational; for, if they cannot separate the law from the fact, and if the exceptions are prevented from applying to law and fact, these words would have no force at all. It would be proper to refer here to any thing that could be understood in the federal court. They may except generally both as to law and fact, or they may except as to the law only, or fact only. Under these impressions, I have no difficulty in saying that I consider it as an unfortunate clause. But when I thus impeach it, the same candor which I have hitherto followed calls upon me to declare that it is not so dangerous as

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it has been represented. Congress can regulate it properly, and I have no doubt they will. An honorable gentleman has asked, Will you put the body of the state in prison? How is it between independent states? If a government refuses to do justice to individuals, war is the consequence Is this the bloody alternative to which we are referred? Suppose justice was refused to be done by a particular state to another; I am not of the same opinion with the honorable gentleman. I think, whatever the law of nations may say, that any doubt respecting the construction that a state may be plaintiff, and not defendant, is taken away by the words *where a state shall be a party.* But it is objected that this is retrospective in its nature. If thoroughly considered, this objection will vanish. It is only to render valid and effective existing claims, and secure that justice, ultimately, which is to be found in every regular government. It is said to be disgraceful. What would be the disgrace? Would it not be that Virginia, after eight states had adopted the government, none of which opposed the federal jurisdiction in this case, rejected it on this account? I was surprised, after hearing him speak so strenuously in praise of the trial by jury, that he would rather give it up than have it regulated as it is in the Constitution. Why? Because it is not established in civil cases, and in criminal cases the jury will not come from the vicinage. It is not excluded in civil cases, nor is a jury from the vicinage in criminal cases excluded. This house has resounded repeatedly with this observation — that where a term is used, all its concomitants follow from the same phrase. Thus, as the trial by jury is established in criminal cases, the incidental right of challenging and excepting is also established, which secures, in the utmost latitude, the benefit of impartiality in the jurors. I beg those gentlemen who deny this doctrine to inform me what part of the bill of English rights, or Great Charter, provides this right. The Great Charter only provides that "no man shall be deprived of the free enjoyment of his life, liberty, or property, unless declared to be forfeited by the judgment of his peers, or the law of the land." The bill of rights gives no additional security on the subject of trial by jury. Where is the provision made, in England, that a jury shall be had in civil cases? This is secured by no constitutional provision It is left to the temper and genius of the people to preserve and protect it.

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I beg leave to differ from my honorable friends in answering this objection. They said that, in case of a general rebellion, the jury was to be drawn from some other part of the country. I know that this practice is sanctified by the usages in England. But I always thought that this was one of those instances to which that nation, though alive to liberty, had unguardedly submitted. I hope it will never be so here. If the whole country be in arms, the prosecutor for the commonwealth can get a good jury, by challenging improper jurors. The right of challenging, also, is sufficient security for the person accused. I can see no instance where this can be abused. It will answer every purpose of the government, and individual security. In this whole business we have had *argumenta ad hominem* in abundance. A variety of individuals, and classes of men, have been solicited to opposition. I will pass by the *glance* which was darted at some gentlemen in this house, and take no notice of it; because the *lance shivered as against adamantine.* Gentlemen then intimidate us on the subject of the lands settled to the westward, and claimed by different claimants, who, they urge, will recover them in the federal court. I will observe that, as to Mr. Henderson's claim, if they look at the laws, they will see a compensation made for him: he has acquiesced, and has some of the lands. The Indiana Company has been dissolved. The claim is dormant, and will probably never be revived. I was once well acquainted with these matters: perhaps I may have forgotten. I was once thoroughly persuaded of the justice of their claim. I advocated it, not only as a lawyer in their behalf, but supported it as my opinion. I will not say how far the acts of Assembly, passed when they had full power, may have operated respecting it. One thing is certain — that, though they may have the right, yet the remedy will not be sought against the settlers, but the state of Virginia. The court of equity will direct a compensation to be made by the state, the claimants being precluded at law from obtaining their right, and the settlers having now an indefeasible title under the state.

The next is Lord Fairfax's quitrents. He died during the war In the year 1782, an act passed sequestering all quitrents, then due, in the hands of the persons holding the lands, until the right of descent should be known, and the

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General Assembly should make final provision therein. This act directed all quitrents, thereafter becoming due, to be paid into the public treasury; so that, with respect to his descendants, this act confiscated the quitrents. In the year 1783, an act passed restoring to the legal representative of the proprietor the quitrents due to him at the time of his death. But in the year 1785 another act passed, by which the inhabitants of the Northern Neck are exonerated and discharged from paying composition and quitrents to the commonwealth. This last act has completely confiscated this property. It is repugnant to no part of the treaty, with respect to the quitrents confiscated by the act of 1782.

I ask the Convention of the free people of Virginia if there can be honesty in rejecting the government because justice is to be done by it? I beg the honorable gentleman to lay the objection to his heart — let him consider it seriously and attentively. Are we to say that we shall discard this government because it would make us all honest? Is this to be the language of the select representatives of the free people of Virginia?

An honorable gentleman observed, to-day, that there is no instance where foreigners have this advantage over the citizens. What is the reason of this? Because a Virginian creditor may go about for a lamentable number of years before he can get justice, while foreigners will get justice immediately. What is the remedy? Honesty. Remove the procrastination of justice, make debts speedily payable, and the evil goes away. But you complain of the evil because you will not remove it. If a foreigner can recover his debts in six months, why not make a citizen do so? There will then be reciprocity. This term is not understood. Let America be compared to any nation with which she has connection, and see the difference with respect to justice. I am sorry to make the comparison; but the truth is that, in those nations, justice is obtained with much more facility than in America.

Gentlemen will perhaps ask me, Why, if you know the Constitution to be ambiguous, will you vote for it? I answer, that I see a power which will be probably exercised to remedy this defect. The style of the ratification will remove this mischief. I do not ask for this concession — that human nature is just and absolutely honest. But I am fair

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when I say that the nature of man is capable of virtue where there is even a temptation, and that the defects in this system will be removed. The appellate jurisdiction might be corrected, as to matters of fact, by the exceptions and regulations of Congress, but certainly will be removed by the amendatory provision in the instrument itself; so that we do not depend on the virtue of our representatives only, but the sympathy and feelings between the inhabitants of the states. On the same grounds, the sum on which appeals will be allowed may be limited to a considerable amount, in order to prevent vexatious and oppressive appeals. The appellate jurisdiction, as to fact, and in trivial sums, are the two most material defects. If it be not considered too early, as ratification has not yet been spoken of, I beg leave to speak of it. If I did believe, with the honorable gentleman, that all power not expressly retained was given up by the people, I would detest this government.

But I never thought so, nor do I now. If, in the ratification, we put words to this purpose, "and that all authority not given is retained by the people, and may be resumed when perverted to their oppression; and that no right can be cancelled, abridged, or restrained, by the Congress, or any officer of the United States,"—I say, if we do this, I conceive that, as this style of ratification would manifest the principles on which Virginia adopted it, we should be at liberty to consider as a violation of the Constitution every exercise of a power not expressly delegated therein. I see no objection to this. It is demonstrably clear to me that rights not given are retained, and that liberty of religion, and other rights, are secure. I hope this committee will not reject it for faults which can be corrected, when they see the consequent confusion that will follow.

MONDAY, *June* 23, 1788.

[The incomplete and inaccurate state in which the speeches of this day appear must be ascribed to the absence of the person who took the rest of the speeches in short hand. As he could not possibly attend on this day, the printer hereof, earnestly desirous of conveying as much information as possible to the public on so important a subject, has endeavored, by the assistance of his notes, to give as full and impartial an account of this day's proceedings as was practicable without the aid of stenography.]

[The 1st and 2d sections of the 3d article still under consideration.]

Mr. NICHOLAS informed the committee that he had

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attempted, on a former occasion, to deliver his sentiments on the subject of the Constitution; he therefore did not mean to trouble the committee now,—but he hoped that gentlemen were satisfied with the arguments that had been urged by those who were last up, and that the clerk would proceed to read the next clause.

Mr. HENRY replied, that he did not consider the objections answered in such a manner as gave satisfaction. He hoped gentlemen would consider and remember that, if they were not heard now, they may never be heard again on the subject: it was an important part of the proposed plan of government, which ought, if possible, to be fairly understood; he hoped, therefore, that gentlemen would not be impatient. He proceeded to state the cases which might arise under the proposed plan of government, and the probable *interference of the federal judiciary with the state judiciaries;* the dangers and difficulties which would arise to the citizens from the operation of a federal revenue law which would extend to the lands, tenements, and other property, coming under the denomination of direct taxes—and, when intrusted to a federal collector, might be attended with abuses of a dangerous and alarming tendency; the property of the citizens seized and sold for one tenth part of its value; they ousted from their house and home, with no other resource for redress but to the federal government, which might perhaps be five hundred miles from the place of sale. He observed, This may be done, Mr. Chairman; for we have instances to prove my assertion, even in some parts of our state, where persons have been turned out of house and home by our collectors, and their property sold for a mere trifle; and if it had not been for an act of the last Assembly, this practice would still have continued. Mr. Chairman, I feel myself particularly interested in this part of the Constitution. I perceive dangers must and will arise; and, when the laws of that government come to be enforced here, I have my fears for the consequences. It is not on that paper before you we have to rely, should it be received; it is on those who may be appointed under it. It will be an empire of men, and not of laws. Your rights and liberties rest upon men. Their wisdom and integrity may preserve you; but, on the contrary, should they prove ambitious and designing,

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may they not flourish and triumph upon the ruins of their country?

He then proceeded to state the appellate jurisdiction of the judicial power, both as to law and fact, with such exceptions and under such regulations as Congress shall make. He observed, that, as Congress had a right to organize the federal judiciary, they might or might not have recourse to a jury, as they pleased. He left it to the candor of the honorable gentleman to say whether those persons who were at the expense of taking witnesses to Philadelphia, or wherever the federal judiciary may sit, could be certain whether they were to be heard before a jury or not. An honorable gentleman (Mr. Marshall) the other day observed, that he conceived the trial by jury better secured under the plan on the table than in the British government, or even in our bill of rights. I have the highest veneration and respect for the honorable gentleman, and I have experienced his candor on all occasions; but, Mr. Chairman, in this instance, he is so materially mistaken that I cannot but observe, he is much in error. I beg the clerk to read that part of the Constitution which relates to trial by jury. [*The clerk then read the 8th article of the bill of rights.*]

Mr. MARSHALL rose to explain what he had before said on this subject: he informed the committee that the honorable gentleman (Mr. Henry) must have misunderstood him. He said that he conceived the trial by jury was as well secured, and not better secured, in the proposed new Constitution as in our bill of rights. [*The clerk then read the 11th article of the bill of rights.*]

Mr. HENRY. Mr. Chairman: the gentleman's candor, sir, as I informed you before, I have the highest opinion of, and am happy to find he has so far explained what he meant; but, sir, has he mended the matter? Is not the ancient trial by jury preserved in the Virginia bill of rights? and is that the case in the new plan? No, sir; they can do it if they please. Will gentlemen tell me the trial by a jury of the vicinage where the party resides is preserved? True, sir, there is to be a trial by the jury in the state where the fact was committed; but, sir, this state, for instance, is so large that your juries may be collected five hundred miles from where the party resides — no neighbors who are acquainted with their characters, their good or bad conduct in

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life, to judge of the unfortunate man who may be thus exposed to the rigor of that government. Compare this security, then, sir, in our bill of rights with that in the new plan of government; and in the first you have it, and in the other, in my opinion, not at all. But, sir, in what situation will our citizens be, who have made large contracts under our present government? They will be called to a federal court, and tried under the retrospective laws; for it is evident, to me at least, that the federal court must look back, and give better remedies, to compel individuals to fulfil them.

The whole history of human nature cannot produce a government like that before you. The manner in which the judiciary and other branches of the government are formed, seems to me calculated to lay prostrate the states, and the liberties of the people. But, sir, another circumstance ought totally to reject that plan, in my opinion; which is, that it cannot be understood, in many parts, even by the supporters of it. A constitution, sir, ought to be, like a beacon, held up to the public eye, so as to be understood by every man. Some gentlemen have observed that the word *jury* implies a jury of the vicinage. There are so many inconsistencies in this, that, for my part, I cannot understand it. By the bill of rights of England, a subject has a right to a trial by his peers. What is meant by his peers? Those who reside near him, his neighbors, and who are well acquainted with his character and situation in life. Is this secured in the proposed plan before you? No, sir. As I have observed before, what is to become of the *purchases of the Indians?*— those unhappy nations who have given up their lands to private purchasers; who, by being made drunk, have given a thousand, nay, I might say, ten thousand acres, for the trifling sum of sixpence! It is with true concern, with grief, I tell you that I have waited with pain to come to this part of the plan; because I observed gentlemen admitted its being defective, and, I had my hopes, would have proposed amendments But this part they have defended; and this convinces me of the necessity of obtaining amendments before it is adopted. They have defended it with ingenuity and perseverance, but by no means satisfactorily. If previous amendments are not obtained, the trial by jury is gone. British debtors will be ruined by being dragged to

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the federal court, and the liberty and happiness of our citizens gone, never again to be recovered.

Mr. STEPHENS. Mr. Chairman: the gentleman, sir, means to frighten us by his bugbears of hobgoblins, his sale of lands to pay taxes, Indian purchases, and other horrors, that I think I know as much about as he does. I have travelled through the greater part of the Indian countries. I know them well, sir. I can mention a variety of resources by which the people may be enabled to pay their taxes.

[He then went into a description of the Mississippi and its waters, Cook's River, the Indian tribes residing in that country, and the variety of articles which might be obtained to advantage by trading with these people.]

I know, Mr. Chairman, of several rich mines of gold and silver in the western country; and will the gentleman tell me that these precious metals will not pay taxes? If the gentleman does not like this government, let him go and live among the Indians. I know of several nations that live very happily; and I can furnish him with a vocabulary of their language.

Mr. GEORGE NICHOLAS observed, that he should only make a few observations on the objections that had been stated to the clauses now under consideration — and not renew the answer already given. The gentleman says he would admit some parts of the Constitution, but that he would never agree to that now before us. I beg gentlemen, when they retire from these walls, that they would take the Constitution, and strike out such parts as the honorable gentleman (Mr. Henry) has given his approbation to, and they will find what a curious kind of government he would make it. It appears to me, sir, that he has objected to the whole; and that no part, if he had his way, would be agreed to.

It has been observed, sir, that the judges appointed under the British constitution are more independent than those to be appointed under the plan on the table. This, sir, like other assertions of honorable gentlemen, is equally groundless. May there not be a variety of pensions granted to the judges in England, so as to influence them? and cannot they be removed by a vote of both houses of Parliament? This is not the case with our federal judges. They are to be appointed during good behavior, and cannot be removed, and at stated times are to receive a compensation for their ser-

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vices. We are told, sir, of fraudulent assignments of bonds. Do gentlemen suppose that the federal judges will not see into such conduct, and prevent it? Western claims are to be revived too — new suits commenced in the federal courts for disputes already determined in this state. This, sir, this cannot be, for they are already determined under the laws of this state, and, therefore, are conclusive.

But, sir, we are told that two executions are to issue — one from the federal court and the other from the state court. Do not gentlemen know, sir, that the first execution is good, and must be satisfied, and that the debtor cannot be arrested under the second execution? Quitrents, too, sir, are to be sued for. To satisfy gentlemen, sir, I beg leave to refer them to an act of Assembly passed in the year 1782, before the peace, which absolutely abolished the quitrents, and discharged the holders of lands in the Northern Neck from any claim of that kind. [He then read the act alluded to.] As to the claims of certain companies who purchased lands of the Indians, they were determined prior to the opening of the land-office by the Virginia Assembly; and it is not to be supposed they will again renew their claims. But, sir, there are gentlemen who have come by large possessions, that it is not easy to account for.

[Here Mr. HENRY interfered, and hoped the honorable gentleman meant nothing personal.]

Mr. NICHOLAS observed, I mean what I say, sir. But we are told of *the blue laws* of Massachusetts: are these to be brought in debate here? Sir, when the gentleman mentioned them the day before yesterday, I did not well understand what he meant; but from inquiry, I find, sir, they were laws made for the purpose of preserving the morals of the people, and took the name of *blue* laws from being written on blue paper. But how does this apply to the subject before you? Is this to be compared to the plan now on the table? Sir, this puts me in mind of an observation I have heard out of doors; which was that, because the New Englandmen wore black stockings and plush breeches, there can be no union with them. We have heard a great deal of the trial by jury — a design to destroy the state judiciaries, and the destruction of the state governments. This, sir, has already been travelled over, and I think sufficiently explained

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to render it unnecessary for me to trouble this committee again on the subject.

Mr. HENRY. Mr. Chairman, if the gentleman means personal insinuations, or to wound my private reputation, I think this an improper place to do so. If, on the other hand, he means to go on in the discussion of the subject, he ought not to apply arguments which might tend to obstruct the discussion. As to land matters, I can tell how I came by what I have; but I think that gentleman (Mr. Nicholas) has no right to make that inquiry of me. I meant not to offend any one. I have not the most distant idea of injuring any gentleman: my object was to obtain information. If I have offended in private life, or wounded the feelings of any man, I did not intend it. I hold what I hold in right, and in a just manner. I beg pardon, sir, for having intruded thus far.

Mr. NICHOLAS. Mr. Chairman, I meant no personality in what I said, nor did I mean any resentment. If such conduct meets the contempt of that gentleman, I can only assure him it meets with an equal degree of contempt from me.

[Mr. President observed, that he hoped gentlemen would not be personal; that they would proceed to investigate the subject calmly, and in a peaceable manner.]

Mr. NICHOLAS replied, that he did not mean the honorable gentleman, (Mr. Henry;) but he meant those who had taken up large tracts of land in the western country. The reason he would not explain himself before was, that he thought some observations dropped from the honorable gentleman which ought not to have come from one gentleman to another.

Mr. MONROE. Mr. Chairman: I am satisfied of the propriety of closing this subject, sir; but I must beg leave to trouble the committee a little further. We find, sir, that two different governments are to have concurrent jurisdiction in the same object. May not this bring on a conflict in the judiciary? And if it does, will it not end in the ruin of one or the other? There will be two distinct judiciaries — one acting under the federal authority, the other the state authority. May it not also tend to oppress the people by having suits going on against them in both courts for the same debt?

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Mr. MADISON answered Mr. Monroe, by observing that the county courts were perfectly independent of each other, where the same inconvenience might arise: the states are also independent of each other. We well know, sir, that foreigners cannot get justice done them in these courts, and this has prevented many wealthy gentlemen from trading or residing among us. There are also many public debtors, who have escaped from justice for want of such a method as is pointed out in the plan on the table. To prevent any interference of the federal and state judiciaries, the judges of the states may be deprived of holding any office in the general government.

Mr. GRAYSON observed, that the federal and state judiciaries could not, on the present plan, be kept in perfect harmony. As to the trial by jury being safer here than in England, that I deny. Jury trials are secured there, sir, by Magna Charta, in a clear and decided manner; and that here it is not in express and positive terms, is admitted by most gentlemen who now hear me. He concluded with saying, that he did not believe there existed a social compact upon the face of the earth so vague and so indefinite as the one now on the table.

Mr. HENRY went into an explanation of the trial by jury, and the difference between the new plan and our bill of rights, and observed that the latter had been violated by several acts of Assembly, which could only be justified by necessity. He begged gentlemen to consider how necessary it was to have that invaluable blessing secured: those feeble implications, relative to juries, in the new plan, might create the unhappy tendency of factions in a republican government, which nothing but a monarchy could suppress. As to people escaping with public money, the gentleman must know that bond and security are always taken on occasions where men are intrusted with collection of it; and these can follow them, and be sued for and recovered in another state, or wherever they may escape to.

Mr. MADISON here observed, that the declaration on that paper could not diminish the security of the people, unless a majority of their representatives should concur in a violation of their rights.

Mr. GEORGE MASON. Mr. Chairman, I should not have troubled the committee again on this subject, were

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there not some arguments in support of that plan, sir, that appear to me totally unsatisfactory. With respect to concurrent jurisdiction, sir, the honorable gentleman has observed, that county courts had exercised this right without complaint. Have Hanover and Henrico the same objects? Can an officer in either of those counties serve a process in the other? The federal judiciary has concurrent jurisdiction throughout the states, and therefore must interfere with the state judiciaries. Congress can pass a law constituting the powers of the federal judiciary throughout the states: they may also pass a law vesting the federal power in the state judiciaries. These laws are *permanent*, and cannot be controverted by any law of the state.

If we were forming a general government, and not states, I think we should perfectly comply with the genius of the paper before you; but if we mean to form one great national government for thirteen states, the arguments which I have heard hitherto in support of this part of the plan do not apply at all. We are willing to give up all powers which are necessary to preserve the peace of the Union, so far as respects foreign nations, or our own preservation; but we will not agree to a federal judiciary, which is not necessary for this purpose, because the powers there granted will tend to oppress the middling and lower class of people. A poor man seized by the federal officers, and carried to the federal court, — has he any chance under such a system as this? Justice itself may be bought too dear; yet this may be the case. It may cost a man five hundred pounds to recover one hundred pounds. These circumstances are too sacred to leave undefined; and I wish to see things certain, positive, and clear. But, however, sir, these matters have been so fully investigated, that I beg pardon for having intruded so far, and I hope we shall go on in the business.

[The 1st section of the 4th article was then read.]

Mr. GEORGE MASON. Mr. Chairman: the latter part of this clause, sir, I confess I do not understand — *Full faith and credit shall be given to all acts;* and how far it may be proper that Congress shall declare the effects, I cannot clearly see into.

Mr. MADISON. Mr. Chairman, it appears to me that this is a clause which is absolutely necessary. I never heard

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any objection to this clause before, and have not employed a thought on the subject.

[The 2d section was then read.]

Mr. GEORGE MASON. Mr. Chairman, on some former part of the investigation of this subject, gentlemen were pleased to make some observations on the security of *property* coming within this section. It was then said, and I now say, that *there is no security;* nor have gentlemen convinced me of this.

[The 3d section was then read.]

Mr. GRAYSON. Mr. Chairman: it appears to me, sir, under this section, there never can be *a southern state admitted into the Union.* There are seven states, which are a majority, and whose interest it is to prevent it. The balance being actually in their possession, they will have the regulation of commerce, and the federal ten miles square wherever they please. It is not to be supposed, then, that they *will admit* any southern state into the Union, so as to lose that majority.

Mr. MADISON replied, that he thought this part of the plan *more favorable to the Southern States* than the present Confederation, as there was a greater chance of *new states* being admitted.

Mr. GEORGE MASON took a retrospective view of several parts which had been before objected to. He endeavored to demonstrate the dangers that must inevitably arise from *the insecurity* of our rights and privileges, as they depended on vague, indefinite, and ambiguous implications. The adoption of a system so replete with defects, he apprehended, could not but be productive of the most *alarming* consequences. He dreaded popular resistance to its operation. He expressed, in emphatic terms, the *dreadful effects* which must ensue, should the people resist; and concluded by observing, that he trusted gentlemen would pause before they would decide a question which involved such awful consequences.

Mr. LEE, (of Westmoreland.) Mr. Chairman, my feelings are so oppressed with the declarations of my honorable friend, that I can no longer suppress my utterance. I respect the honorable gentleman, and never believed I should live to have heard fall from his lips opinions so injurious to our country, and so opposite to the dignity of this assembly

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If the dreadful picture which he has drawn be so abhorrent to his mind as he has declared, let me ask the honorable gentleman if he has not pursued the very means to bring into action the horrors which he deprecates. Such speeches within these walls, from a character so venerable and estimable, easily progress into overt acts, among the less thinking and the vicious. Then, sir, I pray you to remember, and the gentlemen in opposition not to forget, should these impious scenes commence, which my honorable friend might abhor, and which I execrate, whence and how they began.

God of heaven avert from my country the dreadful curse!

But if the madness of some, and the vice of others, should risk the awful appeal, I trust that the friends to the paper on your table, conscious of the justice of their cause, conscious of the integrity of their views, and recollecting their uniform moderation, will meet the afflicting call with that firmness and fortitude which become men summoned to defend what they conceive to be the true interest of their country, and will prove to the world that, although they boast not, in words, of love of country and affection for liberty, still they are not less attached to these invaluable objects than their vaunting opponents, and can, with alacrity and resignation, encounter every difficulty and danger in defence of them.

The remainder of the Constitution was then read, and the several objectionable parts noticed by the opposition, particularly that which related to the mode pointed out by which *amendments* were to be obtained; and, after discussing it fully, the Convention then rose.

TUESDAY, *June* 24, 1788.

Mr. WYTHE arose, and addressed the chairman; but he spoke so very low that his speech could not be fully comprehended. He took a cursory view of the situation of the United States previous to the late war, their resistance to the oppression of Great Britain, and the glorious conclusion and issue of that arduous conflict. To perpetuate the blessings of freedom, happiness, and independence, he demonstrated the necessity of a firm, indissoluble union of the states. He expatiated on the defects and inadequacy of the Confederation, and the consequent misfortunes

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suffered by the people. He pointed out the impossibility of securing liberty without society, the impracticability of acting personally, and the inevitable necessity of delegating power to agents. He then recurred to the system under consideration. He admitted its imperfection, and the propriety of some amendments. But the excellency of many parts of it could not be denied by its warmest opponents. He thought that experience was the best guide, and could alone develop its consequences. Most of the improvements that had been made in the science of government, and other sciences, were the result of experience. He referred it to the advocates for amendments, whether, if they were indulged with any alterations they pleased, there might not still be a necessity of alteration.

He then proceeded to the consideration of the question of previous or subsequent *amendments*. The critical situation of America, the extreme danger of dissolving the Union, rendered it necessary to adopt the latter alternative. He saw no danger from this. It appeared to him, most clearly, that any amendments which might be thought necessary would be easily obtained *after ratification*, in the manner proposed by the Constitution, as amendments were desired by all the states, and had already been proposed by the several states. He then *proposed* that the committee *should ratify the Constitution*, and that whatsoever amendments might be deemed necessary should be recommended to the consideration of the Congress which should first assemble under the Constitution, to be acted upon according to the mode prescribed therein.

[The resolution of ratification proposed by Mr. Wythe was then read by the clerk; which see hereafter in the report of the committee to the Convention.]

Mr. HENRY, after observing that the proposal of ratification was premature, and that the importance of the subject required the most mature deliberation, proceeded thus:—

The honorable member must forgive me for declaring my dissent from it; because, if I understand it rightly, it admits that the new system is defective, and most capitally; for, immediately after the proposed ratification, there comes a declaration that the paper before you is not intended to violate any of these three great rights — the liberty of religion, liberty of the press, and the trial by jury. What is the in-

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ference when you enumerate the rights which you are to enjoy? That those not enumerated are relinquished. There are only three things to be retained — religion, freedom of the press, and jury trial. Will not the ratification carry every thing, without excepting these three things? Will not all the world pronounce that we intended to give up all the rest? Every thing it speaks of, by way of rights, is comprised in these things. Your subsequent amendments only go to these three amendments.

I feel myself distressed, because the necessity of securing our *personal rights* seems not to have pervaded the minds of men; for many other valuable things are omitted: — for instance, general warrants, by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person without evidence of his crime, ought to be prohibited. As these are admitted, any man may be seized, any property may be taken, in the most arbitrary manner, without any evidence or reason. Every thing the most sacred may be searched and ransacked by the strong hand of power. We have infinitely more reason to dread general warrants here than they have in England, because there, if a person be confined, liberty may be quickly obtained by the writ of *habeas corpus*. But here a man living many hundred miles from the judges may get in prison before he can get that writ.

Another most fatal omission is with respect to standing armies. In our bill of rights of Virginia, they are said to be dangerous to liberty, and it tells you that the proper defence of a free state consists in militia; and so I might go on to ten or eleven things of immense consequence secured in your bill of rights, concerning which that proposal is silent. Is that the language of the bill of rights in England? Is it the language of the American bill of rights, that these three rights, and these only, are valuable? Is it the language of men going into a new government? Is it not necessary to speak of those things before you go into a compact? How do these three things stand? As one of the parties, we declare we do not mean to give them up. This is very dictatorial — much more so than the conduct which proposes alterations as the condition of adoption. In a compact there are two parties — one excepting, and another proposing. As a party, we propose that we shall secure these three things;

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and before we have the assent of the other contracting party, we go into the compact, and leave these things at their mercy.

What will be the consequence? Suppose the other states shall call this dictatorial. They will say, Virginia has gone into the government, and carried with her certain propositions, which, she says, ought to be concurred in by the other states. They will declare that she has no right to dictate to other states the conditions on which they shall come into the Union. According to the honorable member's proposal, the ratification will cease to be obligatory unless they accede to these amendments. We have ratified it. You have committed a violation, will they say. They have not violated it. We say, we will go out of it. You are then reduced to a sad dilemma—to give up these three rights, or leave the government. This is worse than our present Confederation, to which we have hitherto adhered honestly and faithfully. We shall be told we have violated it, because we have left it for the infringement and violation of conditions which they never agreed to be a part of the ratification. The ratification will be complete. The proposal is made by the party. We, as the other, accede to it, and propose the security of these three great rights; for it is only a proposal. In order to secure them, you are left in that state of fatal hostility which I shall as much deplore as the honorable gentleman. I exhort gentlemen to think seriously before they ratify this Constitution, and persuade themselves that they will succeed in making a feeble effort to get amendments after adoption.

With respect to that part of the proposal which says that every power not granted remains with the people, it must be previous to adoption, or it will involve this country in inevitable destruction. To talk of it as a thing subsequent, not as one of your unalienable rights, is leaving it to the casual opinion of the Congress who shall take up the consideration of that matter. They will not reason with you about the effect of this Constitution. They will not take the opinion of this committee concerning its operation. They will construe it as they please. If you place it subsequently, let me ask the consequences. Among ten thousand *implied powers* which they may assume, they may, if we be engaged in war, liberate every one of your slaves if they please. And this must and will be done by men, a majority of whom have not

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a common interest with you. They will, therefore, have no feeling of your interests. It has been repeatedly said here, that the great object of a national government was national defence. That power which is said to be intended for security and safety may be rendered detestable and oppressive. If they give power to the general government to provide for the *general defence*, the means must be commensurate to the end. All the means in the possession of the people must be given to the government which is intrusted with the public defence. In this state there are two hundred and thirty-six thousand blacks, and there are many in several other states. But there are few or none in the Northern States; and yet, if the Northern States shall be of opinion that our slaves are numberless, they may call forth every national resource. May Congress not say, *that every black man must fight?* Did we not see a little of this last war? We were not so hard pushed as to make emancipation general; but acts of Assembly passed that every slave who would go to the army should be free. Another thing will contribute to bring this event about. Slavery is detested. We feel its fatal effects —we deplore it with all the pity of humanity. Let all these considerations, at some future period, press with full force on the minds of Congress. Let that urbanity, which I trust will distinguish America, and the necessity of national defence, —let all these things operate on their minds; they will search that paper, and see if they have power of manumission. And have they not, sir? Have they not power to provide for the general defence and welfare? May they not think that these call for the abolition of slavery? May they not pronounce all slaves free, and will they not be warranted by that power? This is no ambiguous implication or logical deduction. The paper speaks to the point: they have the power in clear, unequivocal terms, and will clearly and certainly exercise it. As much as I deplore slavery, I see that prudence forbids its abolition. I deny that the general government ought to set them free, because a decided majority of the states have not the ties of sympathy and fellow-feeling for those whose interest would be affected by their emancipation. The majority of Congress is to the north, and the slaves are to the south.

In this situation, I see a great deal of the property of the people of Virginia in jeopardy, and their peace and tran-

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quillity gone. I repeat it again, that it would rejoice my very soul that every one of my fellow-beings was emancipated. As we ought with gratitude to admire that decree of Heaven which has numbered us among the free, we ought to lament and deplore the necessity of holding our fellow-men in bondage. But is it practicable, by any human means, to liberate them without producing the most dreadful and ruinous consequences? We ought to possess them in the manner we inherited them from our ancestors, as their manumission is incompatible with the felicity of our country. But we ought to soften, as much as possible, the rigor of their unhappy fate. I know that, in a variety of particular instances, the legislature, listening to complaints, have admitted their emancipation. Let me not dwell on this subject. I will only add that this, as well as every other property of the people of Virginia, is in jeopardy, and put in the hands of those who have no similarity of situation with us. This is a local matter, and I can see no propriety in subjecting it to Congress.

With respect to subsequent amendments, proposed by the worthy member, I am distressed when I hear the expression. It is a new one altogether, and such a one as stands against every idea of fortitude and manliness in the states, or any one else. Evils admitted in order to be removed subsequently, and tyranny submitted to in order to be excluded by a subsequent alteration, are things totally new to me. But I am sure the gentleman meant nothing but to amuse the committee. I know his candor. His proposal is an idea dreadful to me. I ask, does experience warrant such a thing from the beginning of the world to this day? Do you enter into a compact first, and afterwards settle the terms of the government? It is admitted by every one that this is a compact.

Although the Confederation be lost, it is a compact, constitution, or something of that nature. I confess I never heard of such an idea before. It is most abhorrent to my mind. You endanger the tranquillity of your country, you stab its repose, if you accept this government unaltered. How are you to allay animosities? — for such there are, great and fatal.

He flatters me, and tells me that I could influence the people, and reconcile them to it. Sir, their sentiments are

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as firm and steady as they are patriotic. Were I to ask them to apostatize from their native religion, they would despise me. They are not to be shaken in their opinions with respect to the propriety of preserving their rights. You never can persuade them that it is necessary to relinquish them. Were I to attempt to persuade them to abandon their patriotic sentiments, I should look on myself as the most infamous of men.

I believe it to be a fact that the great body of yeomanry are in decided opposition to it. I may say with confidence that, for nineteen counties adjacent to each other, nine tenths of the people are conscientiously opposed to it. I may be mistaken, but I give you it as my opinion; and my opinion is founded on personal knowledge, in some measure, and other good authority. I have not hunted *popularity* by declaiming to injure this government. Though public fame might say so, it was not owing to me that this flame of opposition has been kindled and spread. These men never will part with their political opinions. If they should see their political happiness secured to the latest posterity, then, indeed, they may agree to it. Subsequent amendments will not do for men of this cast. Do you consult the Union in proposing them? You may amuse them as long as you please, but they will never like it. You have not solid reality — the hearts and hands of the men who are to be governed.

Have gentlemen no respect to the actual dispositions of the people in the adopting states? Look at Pennsylvania and Massachusetts. These two great states have raised as great objections to that government as we do. There was a majority of only nineteen in Massachusetts. We are told that only ten thousand were represented in Pennsylvania, although seventy thousand had a right to be represented. Is not this a serious thing? Is it not worth while to turn your eyes, for a moment, from subsequent amendments to the situation of your country? Can you have a lasting union in these circumstances? It will be in vain to expect it. But if you agree to previous amendments, you shall have union, firm and solid.

I cannot conclude without saying that I shall have nothing to do with it, if subsequent amendments be determined upon. Oppressions will be carried on as radically by the majority when adjustments and accommodations will be held up. I

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say, I conceive it my duty, if this government is adopted before it is amended, to go home. I shall act as I think my duty requires. Every other gentleman will do the same. Previous amendments, in my opinion, are necessary to procure peace and tranquillity. I fear, if they be not agreed to, every movement and operation of government will cease; and how long that baneful thing, civil discord, will stay from this country, God only knows. When men are free from restraint, how long will you suspend their fury? The interval between this and bloodshed is but a moment. The licentious and wicked of the community will seize with avidity every thing you hold. In this unhappy situation, what is to be done? It surpasses my stock of wisdom. If you will, in the language of freemen, stipulate that there are rights which no man under heaven can take from you, you shall have me going along with you; not otherwise.

[Here Mr. Henry informed the committee that he had a resolution prepared, to refer a declaration of rights, with certain amendments to the most exceptionable parts of the Constitution, to the other states in the confederacy, for their consideration, previous to its ratification. The clerk than read the resolution, the declaration of rights, and amendments, which were nearly the same as those ultimately proposed by the Convention; which see at the conclusion.]

Mr. HENRY then resumed the subject. I have thus candidly submitted to you, Mr. Chairman, and this committee, what occurred to me as proper amendments to the Constitution, and a declaration of rights containing those fundamental, unalienable privileges, which I conceive to be essential to liberty and happiness. I believe that, on a review of these amendments, it will still be found that the arm of power will be sufficiently strong for national purposes, when these restrictions shall be a part of the government. I believe no gentleman who opposes me in sentiments will be able to discover that any one feature of a strong government is altered; and at the same time your unalienable rights are secured by them. The government unaltered may be terrible to America, but can never be loved till it be amended. You find all the resources of the continent may be drawn to a point. In danger, *the President* may concentre to a point every effort of the continent. If the government be constructed to satisfy the people, and remove their apprehensions, the wealth and the strength of the continent will go where

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public utility shall direct. This government, with these restrictions, will be a strong government, united with the privileges of the people. In my weak judgment, a government is strong when it applies to the most important end of all governments — the rights and privileges of the people. In the honorable member's proposal, jury trial, the press and religion, and other essential rights, are not to be given up. Other essential rights — what are they? The world will say that you intended to give them up. When you go into an enumeration of your rights, and stop that enumeration, the inevitable conclusion is, that what is omitted is intended to be surrendered.

Anxious as I am to be as little troublesome as possible, I cannot leave this part of the subject without adverting to one remark of the honorable gentleman. He says that, rather than bring the Union into danger, he will adopt it with its imperfections. A great deal is said about disunion, and consequent dangers. I have no claim to a greater share of fortitude than others; but I can see no kind of danger. I form my judgment on a single fact alone — that we are at peace with all the world; nor is there any apparent cause of a rupture with any nation in the world. Is it among the American states that the cause of disunion is to be feared? Are not the states using all their efforts for the promotion of union? New England sacrifices local prejudices for the purposes of union. We hear the necessity of the union, and predilection for the union, reëchoed from all parts of the continent; and all at once disunion is to follow! If gentlemen dread disunion, the very thing they advocate will inevitably produce it. A previous ratification will raise insurmountable obstacles to union. New York is an insurmountable obstacle to it, and North Carolina also. They will never accede to it, till it be amended. A great part of Virginia is opposed most decidedly to it as it stands. This very spirit, which will govern us in these three states, will find a kindred spirit in the adopting states. Give me leave to say that it is very problematical if the adopting states can stand on their own legs. I hear only on one side, but as far as my information goes, there are heartburnings and animosities among them. Will these animosities be cured by subsequent amendments?

Turn away from America, and consider European politics.

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The nations there which can trouble us are, France, England, and Spain. But at present we know for a certainty that those nations are engaged in very different pursuits from American conquests. We are told by our intelligent ambassador, that there is no such danger as has been apprehended. Give me leave then to say, that dangers from beyond the Atlantic are imaginary.

From these premises, then, it may be concluded that, from the creation of the world to this time, there never was a more fair and proper opportunity than we have at this day to establish such a government as will permanently establish the most transcendent political felicity. Since the revolution, there has not been so much experience. Since then, the general interests of America have not been better understood, nor the Union more ardently loved, than at this present moment. I acknowledge the weakness of the old Confederation. Every man says that something must be done. Where is the moment more favorable than this? During the war, when ten thousand dangers surrounded us, America was magnanimous. What was the language of the little state of Maryland? "I will have time to consider. I will hold out three years. Let what may come, I will have time to reflect." Magnanimity appeared every where. What was the upshot? America triumphed. Is there any thing to forbid us to offer these amendments to the other states? If this moment goes away unimproved, we shall never see its return.

We now act under a happy system, which says that a majority may alter the government when necessary. But by the paper proposed, a majority will forever endeavor in vain to alter it. Three fourths may. Is not this the most promising time for securing the necessary alteration? Will you go into that government, where it is a principle that a contemptible minority may prevent an alteration? What will be the language of the majority? Change the government. Nay, seven eighths of the people of America may wish the change; but the minority may come with a Roman *veto*, and object to the alteration. The language of a magnanimous country, and of freemen, is, Till you remove the defects, we will not accede. It would be in vain for me to show that there is no danger to prevent our obtaining those amendments, if you are not convinced already. If the other states

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will not agree to them, it is not an inducement to union. The language of this paper is not dictatorial, but merely a proposition for amendments. The proposition of Virginia met with a favorable reception before. We proposed that convention which met at Annapolis. It was not called dictatorial. We proposed that at Philadelphia. Was Virginia thought dictatorial? But Virginia is now to lose her pre-eminence. Those rights of equality to which the meanest individual in the community is entitled, are to bring us down infinitely below the Delaware people. Have we not a right to say, Hear our propositions! Why, sir, your slaves have a right to make their humble requests. Those who are in the meanest occupations of human life have a right to complain. What do we require? Not preëminence, but safety — that our citizens may be able to sit down in peace and security under their own fig-trees. I am confident that sentiments like these will meet with unison in every state; for they will wish to banish discord from the American soil. I am certain that the warmest friend of the Constitution wishes to have fewer enemies — fewer of those who pester and plague him with opposition. I could not withhold from my fellow-citizens any thing so reasonable. I fear you will have no union, unless you remove the cause of opposition. Will you sit down contented with the name of union, without any solid foundation?

Mr. Henry then concluded, by expressing his hopes that his resolution would be adopted, and added, that, if the committee should disapprove of any of his amendments, others might be substituted.

Gov. RANDOLPH. Mr. Chairman: once more, sir, I address you; and perhaps it will be the last time I shall speak concerning this Constitution, unless I be urged by the observations of some gentlemen. Although this is not the first time that my mind has been brought to contemplate this awful period, yet I acknowledge it is not rendered less awful by familiarity with it. Did I persuade myself that those fair days were present which the honorable gentleman described, — could I bring my mind to believe that there were peace and tranquillity in this land, and that there was no storm gathering which would burst, and that previous amendments could be retained, — I would concur with the honorable gentleman; for nothing but the fear of inevitable

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destruction would lead me to vote for the Constitution in spite of the objections I have to it. But, sir, what have I heard to-day? I sympathized most warmly with what other gentlemen said yesterday, that, let the contest be what it may, the minority should submit to the majority. With satisfaction and joy I heard what he then said — that he would submit, and that there should be peace if his power could procure it. What a sad reverse to-day! Are we not told, by way of counterpart to language that did him honor, that he would secede? I hope he will pardon, and correct me if I misrecite him; but if not corrected, my interpretation is, that secession by him will be the consequence of adoption without previous amendments.

[Here Mr. HENRY explained himself, and denied having said any thing of secession, but that he said, he would have no hand in subsequent amendments; that he would remain and vote, and afterwards he would have no business here.]

I see, continued his excellency, that I am not mistaken in my thoughts. The honorable gentleman says, he will remain and vote on the question, but after that he has no business here, and that he will go home. I beg to make a few remarks on the subject of secession. If there be in this house members who have in contemplation to secede from the majority, let me conjure them, by all the ties of honor and duty, to consider what they are about to do. Some of them have more property than I have, and all of them are equal to me in personal rights. Such an idea of refusing to submit to the decision of the majority is destructive of every republican principle. It will kindle a civil war, and reduce every thing to anarchy and confusion. To avoid a calamity so lamentable, I would submit to it, if it contained greater evils than it does.

What are they to say to their constituents when they go home? "We come here to tell you that liberty is in danger, and, though the majority is in favor of it, you ought not to submit." Can any man consider, without shuddering with horror, the awful consequences of such desperate conduct? I entreat men to consider and ponder what good citizenship requires of them. I conjure them to contemplate the consequences as to themselves as well as others. They themselves will be overwhelmed in the general disorder. I did not think that the proposition of the honorable gentleman

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near me (Mr. White) could have met with the treatment it has. The honorable gentleman says there are only three rights stipulated in it. I thought this error might have been accounted for at first; but after he read it, the continuance of the mistake has astonished me. He has wandered from the point. [Here he read Mr. White's proposition.] Where in this paper do you discover that the people of Virginia are tenacious of three rights only? It declares that all power comes from the people, and whatever is not granted by them, remains with them; that among other things remaining with them, are liberty of the press, right of conscience, and some other essential rights. Could you devise any express form of words, by which the rights contained in the bill of rights of Virginia could be better secured or more fully comprehended? What is the paper which he offers in the form of a bill of rights? Will that better secure our rights than a declaration like this? All rights are therein declared to be completely vested in the people, unless expressly given away. Can there be a more pointed or positive reservation?

That honorable gentleman, and some others, have insisted that the abolition of slavery will result from it, and at the same time have complained that it encourages its continuation. The inconsistency proves, in some degree, the futility of their arguments. But if it be not conclusive, to satisfy the committee that there is no danger of enfranchisement taking place, I beg leave to refer them to the paper itself. I hope that there is none here who, considering the subject in the calm light of philosophy, will advance an objection dishonorable to Virginia — that, at the moment they are securing the rights of their citizens, an objection is started that there is a spark of hope that those unfortunate men now held in *bondage* may, by the operation of the general government, be made *free*. But if any gentleman be terrified by this apprehension, let him read the system. I ask, and I will ask again and again, till I be answered, (not by declamation,) *Where* is the part that has a tendency to *the abolition of slavery?* Is it the clause which says that "the migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by Congress prior to the year 1808"? This is an exception from the power of regulating commerce, and the restriction

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is only to continue till 1808. Then Congress can, by the exercise of that power, prevent future importations; but does it affect the existing state of slavery? Were it right here to mention what passed in convention on the occasion, I might tell you *that the Southern States, even South Carolina herself, conceived this property to be secure by these words.* I believe, whatever we may think here, that there was not a member of the Virginia delegation who had *the smallest suspicion of the abolition of slavery.* Go to their meaning. Point out the clause where this formidable power of emancipation is inserted.

But another clause of the Constitution proves the absurdity of the supposition. The words of the clause are, "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." Every one knows that *slaves* are held to service and labor. And when authority is given to owners of slaves to vindicate their property, *can* it be supposed they can be *deprived* of it? If a citizen of this state, in consequence of this clause, can take his runaway slave in Maryland, can it be seriously thought that, after taking him and bringing him home, he could be made free?

I observed that the honorable gentleman's proposition comes in a truly questionable shape, and is still more extraordinary and unaccountable for another consideration — that, although we went article by article through the Constitution, and although we did not expect a general review of the subject, (as a most comprehensive view had been taken of it before it was regularly debated,) yet we are carried back to the clause giving that dreadful power, for the general welfare. Pardon me, if I remind you of the true state of that business. I appeal to the candor of the honorable gentleman, and if he thinks it an improper appeal, I ask the gentlemen here, *whether* there be a *general, indefinite* power of providing for the general welfare? The power is, "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare;" so that they can only raise money by these means, in order to provide for the general welfare. No man who reads it can say it is general, as the honorable gentleman represents

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it. You must violate every rule of construction and common sense, if you sever it from the power of raising money, and annex it to any thing else, in order to make it that formidable power which it is represented to be.

The honorable gentleman says there is no restraint on the power of issuing general warrants. If I be tedious in asking where is that power, you will ascribe it to him who has put me to the necessity of asking. They have no such power given them: if they have, where is it?

Again he recurs to *standing armies*, and asks if Congress cannot raise such. Look at the bill of rights provided by the honorable gentleman himself, and tell me if there be no great security by admitting it when necessary. It says that standing armies should be avoided in time of peace. It does not absolutely prohibit them. Is there any clause in it, or in the Confederation, which prevents Congress from raising an army? No: it is left to the discretion of Congress. It ought to be in the power of Congress to raise armies, as the existence of society might, at some future period, depend upon it. But it should be recommended to them to use the power only when necessary. I humbly conceive that you have as great security as you could desire from that clause in the Constitution which directs that money for supporting armies will be voted for every two years — as, by this means, the representatives who will have appropriated money unnecessarily, or imprudently, to that purpose, may be removed, and a new regulation made. Review the practice of the favorite nation of the honorable gentleman. In their bill of rights there is no prohibition of a standing army, but only that it ought not to be maintained without the consent of the legislature. Can it be done here without the consent of the democratic branch? Their consent is necessary to every bill, and money bills can originate with them only. Can an army, then, be raised or supported without their approbation?

[His excellency then went over all the articles of Mr. Henry's proposed declaration of rights, and endeavored to prove that the rights intended to be thereby secured were either provided for in the Constitution itself, or could not be infringed by the general government, as being unwarranted by any of the powers which were delegated therein; for that it was in vain to provide against the exercise of a power which did not exist.]

He then proceeded to examine the nature of some of the amendments proposed by the honorable gentleman. As to

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the reservation of rights not expressly given away he repeated what he had before observed of the 2d article of the Confederation, that it was interpreted to prohibit Congress from granting passports, although such a power was necessarily incident to that of making war. Did not this, says he show the vanity of all the federal authority? Gentlemen have displayed great wisdom in the use they make of the experience of the defects in the old Confederation. When we see the defect of that article, are we to repeat it? Are those gentlemen zealous friends to the Union, who profess to be so here, and yet insist on a repetition of measures which have been found destructive to it? I believe their professions, but they must pardon me when I say their arguments are not true.

[His excellency then read the 2d amendment proposed, respecting *the number of representatives.*]

What better security have you under these words than under the clause in the paper before you? This puts it in the power of your representatives to continue the number of it in that paper. They may always find a pretext to justify their regulations concerning it. They may continue the number at two hundred, when an augmentation would be necessary.

As to the amendment respecting direct taxation, the subject has been so fully handled, and is so extensive in its nature, that it is needless to say any thing of it.

The 4th amendment goes on the wide field of indiscriminate suspicion that every one grasps after offices, and that Congress will create them unnecessarily. Perhaps it will exclude the most proper from offices of great importance to the community.

[Here he read the 5th amendment.] — I beg the honorable gentleman to tell me on what subject Congress will exercise this power improperly. If there be any treachery in their view, the words in this amendment are broad enough to allow it. It is as good a security in this Constitution, as human ingenuity can devise; for if they intend any treachery, they will not let you see it.

[Here he read the 7th and 8th amendments.] — I have never hesitated to acknowledge that I wished the regulation of commerce had been put in the hands of a greater body than it is in the sense of the Constitution. But I appeal to

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my colleagues in the federal Convention, whether this was not a *sine qua non* of the Union. Of all the amendments, this is the most destructive, which requires the consent of three fourths of both houses to *treaties* ceding or restraining *territorial rights*. This is priding in the Virginia sovereignty, in opposition to the majority. This suspected Congress, these corrupt sixty-five and corrupt twenty-six, are brought so low they cannot be trusted, lest they should have it in their power to lop off part of Virginia — cede it, so as that it should become a colony to some foreign state. There is no power in the Constitution *to cede any part of the territories of the United States*. The whole number of Congress, being unanimous, have no power to suspend or cede territorial rights. But this amendment admits, in the fullest latitude, that Congress have a right to dismember the empire.

His amendment respecting the militia is unnecessary. The same powers rest in the states by the Constitution. Gentlemen were repeatedly called upon to show where the power of the states over the militia was taken away, but they could not point it out.

[He read the 12th amendment.] — Will this be a melioration of the Constitution? I wish to know what is meant by the words *police* and *good government!* These words may lead to complete tyranny in Congress. Perhaps some gentlemen think that these words relate to particular objects, and that they will diminish and confine their power. They are most extensive in their significations, and will stretch and dilate it, and all the imaginary horrors of the honorable gentleman will be included in this amendment.

[He read the 13th amendment.] — I was of this opinion myself; but I informed you before why I changed it.

[He read the 14th amendment.] — If I were to propose an amendment on this subject, it would be to limit the word *arising*. I would not discard it altogether, but define its extent. The jurisdiction of the judiciary in cases arising under the system, I should wish to be defined, so as to prevent its being extended unnecessarily: I would restrain the appellate cognizance as to fact, and prevent oppressive and vexatious appeals.

[He read the 15th amendment.] — The right of challenging and excepting, I hope, has clearly appeared to the committee to be a necessary appendage of the trial by jury itself.

Permit me now to make a few remarks on the proposal of-

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these amendments, previous to our ratification. The first objection arises from the paper itself. Can you conceive, or does any man believe, that there are twelve, or even nine. states in the whole Union, that would subscribe to this paper?—a paper fraught with, perhaps, more defects than the Constitution itself. What are we about to do? To make this the condition of our coming into this government. I hope gentlemen will never agree to this. If we declare that these amendments, and a bill of rights containing twenty articles, must be incorporated into the Constitution before we assent to it, I ask you whether you may not bid a long farewell to the Union? It will produce that deplorable thing — the dissolution of the Union — which no man yet has dared openly to advocate. No, say the gentlemen, because Maryland kept off three years from the confederacy, and no injury happened. This very argument carries its own refutation with it. The war kept us together, in spite of the discordance of the states. There is no war now. All the nations of Europe have their eyes fixed on America, and some of them perhaps cast wistful looks at you. Their gold may be tried, to sow disunion among us. The same bandage which kept us before together, does not now exist. Let gentlemen seriously ponder the calamitous consequences of dissolving the Union in our present situation. I appeal to the great Searcher of hearts, on this occasion, that we behold the greatest danger that ever happened hanging over us; for previous amendments are but another name for rejection. They will throw Virginia out of the Union, and cause heartaches to many of those gentlemen who may vote for them. But let us consider things calmly. Reflect on the facility of obtaining amendments if you adopt, and weigh the danger if you do not. Recollect that many other states have adopted it, who wish for many amendments. I ask you if it be not better to adopt, and run the chance of amending it hereafter, than run the risk of endangering the Union. The Confederation is gone; it has no authority. If, in this situation, we reject the Constitution, the Union will be dissolved, the dogs of war will break loose, and anarchy and discord will complete the ruin of this country. Previous adoption will prevent these deplorable mischiefs. The union of sentiments with us in the adopting states will render subsequent amendments easy. I therefore rest my happiness with perfect confidence on this subject.

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Mr GEORGE MASON. Mr. Chairman, with respect to commerce and navigation, he has given it as his opinion that their regulation, as it now stands, was a *sine qua non* of the Union, and that without it the states in Convention would never concur. I differ from him. It never was, nor in my opinion ever will be, a *sine qua non* of the Union.

I will give you, to the best of my recollection, the history of that affair. This business was discussed at Philadelphia for four months, during which time the subject of commerce and navigation was often under consideration; and I assert that eight states out of twelve, for more than three months, voted for requiring two thirds of the members present in each house to pass commercial and navigation laws. True it is, that afterwards it was carried by a majority as it stands. If I am right, there was a great majority for requiring two thirds of the states in this business, till a compromise took place between the Northern and Southern States; the Northern States agreeing to the temporary importation of slaves, and the Southern States conceding, in return, that navigation and commercial laws should be on the footing in which they now stand. If I am mistaken, let me be put right. Those are my reasons for saying that this was not a *sine qua non* of their concurrence. The Newfoundland fisheries will require that kind of security which we are now in want of. The Eastern States therefore agreed, at length, that treaties should require the consent of two thirds of the members present in the Senate.

Mr. DAWSON. Mr. Chairman, when a nation is about to make a change in its political character, it behoves it to summon the experience of ages which have passed, to collect the wisdom of the present day, to ascertain clearly those great principles of equal liberty which secure the rights, liberties, and properties, of the people. Such is the situation of the United States at the moment we are about to make such a change.

The Constitution proposed for the government of the United States has been a subject of general discussion. While many able and honorable gentlemen within these walls have, in the development of the various parts, delivered their sentiments with that freedom which will ever mark the citizens of an independent state, and with that ability which will prove to the world their eminent talents, I, sir, although

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urged by my feelings, have forborne to say any thing on my part, from a satisfactory impression of the inferiority of my talents, and from a wish to acquire every information which might assist my judgment in forming a decision on a question of such magnitude. But, sir, as it involves in its fate the interest of so extensive a country, every sentiment which can be offered deserves its proportion of public attention. I shall therefore avoid any apology for now rising, although uncommon propriety might justify it, and rather trust to the candor of those who hear me. Indeed, I am induced to come forward, not from any apprehension that my opinion will have weight, but in order to discharge that duty which I owe to myself, and to those I have the honor to represent.

The defects of the articles by which we are at present confederated have been echoed and reëchoed, not only from every quarter of this house, but from every part of the continent. At the framing of those articles, a common interest excited us to unite for the common good. But no sooner did this principle cease to operate, than the defects of the system were sensibly felt. Since then, the seeds of civil dissension have been gradually opening, and political confusion has pervaded the states. During the short time of my political life, having been fully impressed with the truth of these observations, when a proposition was made by Virginia to invite the sister states to a general convention, at Philadelphia, *to amend these defects*, I readily gave my assent; and when I considered the very respectable characters who formed that body,—when I reflected that they were, most of them, those sages and patriots under whose banners, and by whose counsels, we had been rescued from impending danger, and placed among the nations of the earth,—when I also turned my attention to that illustrious character, to immortalize whose memory Fame shall blow her trump to the latest ages,—I say, when I weighed all these considerations, I was almost persuaded to declare in favor of the proposed plan, and to exert my slender abilities in its favor. But when I came to investigate it impartially, on the immutable principles of government, and to exercise that reason with which the God of nature hath endowed me, and which I will ever freely use, I was convinced of this important, though melancholy truth,—that the greatest men may err, and that

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their errors are sometimes of the greatest magnitude. I was persuaded that, although the proposed plan contains many things excellent, yet, by the adoption of it as it now stands, the liberties of America in general, the property of Virginia in particular, would be endangered.

These being my sentiments, — sentiments which I offer with the diffidence of a young politician, but with the firmness of a republican, which I am ready to change when I am convinced they are founded in error, but which I will support until that conviction, — I should be a traitor to my country, and unworthy that freedom for which I trust I shall ever remain an advocate, were I to declare my entire approbation of the plan as it now stands, or assent to its ratification without previous amendments.

During the deliberations of this Convention, several gentlemen of eminent talents having exerted themselves to prove the necessity of the union by presenting to our view the relative situation of Virginia to the other states, the melancholy representation made to-day, and frequently before, by an honorable gentleman, (Gov. Randolph,) of our state, reduced, in his estimation, to the lowest degree of degradation, must now haunt the recollection of many gentlemen in this committee. How far he has drawn the picture to the life, or where it is too highly colored, rests with them to determine. To gentlemen, however, sir, of their abilities, the task was easy, and perhaps I may add unnecessary. It is a truth admitted on all sides, and I presume there is not a gentleman who hears me who is not a friend to a union of the thirteen states.

But, sir, an opinion has gone abroad (from whence it originated, or by whom it is supported, I will not venture to say) that the opponents to the paper on your table are enemies to the union. It may not, therefore, be improper for me to declare, that I am a warm friend to a firm, federal, energetic government; that I consider a confederation of the states, on republican principles, as a security to their mutual interests, and a disunion as injurious to the whole; but I shall lament exceedingly, when a confederation of independent states shall be converted into a consolidated government; for, when that event shall happen, I shall consider the history of American liberty as short as it has been brilliant, and we shall afford one more proof to the favorite maxim of tyrants, that "mankind cannot govern themselves."

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An honorable gentleman (Col. H. Lee) came forward some days since, with all the powers of eloquence and all the warmth of enthusiasm. After descanting on some military operations to the south, of which he was a spectator, and pronouncing sentence of condemnation on a Mr. Shays, to the north,—as a military character he boldly throws the gauntlet, and defies the warmest friend to the opposition to come forth and say that the friends to the system on your table are not also friends to republican liberty.

Arguments, sir, in this house, should ever be addressed to the reason, and should be applied to the system itself, and not to those who either support or oppose it. I, however, dare come forth, and tell that honorable gentleman, not with the military warmth of a young soldier, but with the firmness of a republican, that, in my humble opinion, had the paper now on your table, and which is so ably supported, been presented to our view ten years ago, (when the American spirit shone forth in the meridian of glory, and rendered us the wonder of an admiring world,) it would have been considered as containing principles incompatible with republican liberty, and therefore doomed to infamy.

Having, sir, made these loose observations, and having proved, I flatter myself, to this honorable Convention, the motives from which my opposition to the proposed system originated, I may now be permitted to turn my attention, for a very few moments, to the system itself; and to point out some of the leading parts most exceptionable, in my estimation — my original objections to which have not been removed by the debate, but rather confirmed.

If we grant to Congress the power of direct taxation, if we yield to them the sword, and if we also invest them with the judicial authority, two questions, of the utmost importance, immediately present themselves to our inquiries — whether these powers will not be oppressive in their operations, and, aided by other parts of the system, convert the thirteen confederated states into one consolidated government; and whether any country as extensive as North America, and where climates, dispositions, and interests, are so essentially different, can be governed under one consolidated plan, except by the introduction of despotic principles.

The warmest friends, sir, to the government, — some of those who formed, signed, and have recommended it, — some

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of those who have enthusiastically supported it in every quarter of this continent, — have answered my first query in the affirmative: they have admitted that it possesses few federal features, and will ultimately end in a consolidated government — a truth which, in my opinion, they would have denied in vain; for every article, every section, every clause, and almost every line, proves that it will have this tendency; and if this position has, during the course of the long and learned debates on this head, been established to the satisfaction of the Convention, I apprehend that the authority of all eminent writers on the subject, and the experience of all ages, cannot be controverted, and that it will be admitted that no government formed on the principles of freedom can pervade all North America.

This, sir, is my great objection — an objection general in its nature, because it operates on the whole system; an objection which I early formed, which I flattered myself would have been removed, but which, I am obliged to say, has been confirmed by the observations which have been made by many learned gentlemen, and which would be tedious for me now to recapitulate.

That the legislative, executive, and judicial powers should be separate and distinct, in all free governments, is a political fact so well established, that I presume I shall not be thought arrogant, when I affirm that no country ever did, or ever can, long remain free, where they are blended. All the states have been in this sentiment when they formed their state constitutions, and therefore have guarded against the danger; and every schoolboy in politics must be convinced of the propriety of the observation; and yet, by the proposed plan, the legislative and executive powers are closely united; the Senate, who compose one part of the legislature, are also, as council to the President, the supreme head, and are concerned in passing laws which they themselves are to execute.

The wisdom, sir, of many nations has induced them to enlarge the powers of their rulers; but there are very few instances of the relinquishment of power, or the abridgment of authority, on the part of the governors. The very 1st clause of the 8th section of the 1st article, which gives to Congress the power "to lay and collect taxes, duties, imposts, excises," &c., appears to me to be big with un-

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necessary danger, and to reduce human nature, to which I would willingly pay a compliment did not the experience of all ages rise up against me, to too great a test. The arguments, sir, which have been urged by some gentlemen, that the impost will defray all expenses, in my estimation cannot be supported; and common sense will never assent to the assertions which have been made, that the government will not be an additional expense to this country. Will not the support of an army and navy — will not the establishment of a multiplicity of offices in the legislative, executive, and particularly the judiciary departments, most of which will be of a national character, and must be supported with a superior degree of dignity and credit — be prodigious additions to the national expense? And, sir, if the states are to retain even a shadow of sovereignty, the expense thence arising must also be defrayed, and will be very considerable.

I come now, sir, to speak of a clause to which our attention has been frequently called, and on which many gentlemen have already delivered their sentiments — a clause, in the estimation of some, of little consequence, and which rather serves as a pretext for scuffling for votes; but which, in my opinion, is one of the most important contained in the system, and to which there are many and weighty objections. I refer to the clause empowering the President, by and with the consent of two thirds of the senators present, to make *treaties*. If, sir, the dismemberment of the empire, if the privation of the most essential national rights, and the very existence of a people, depend on this clause, surely, sir, it merits the most thorough investigation; and if, on that investigation, it appears that those great rights are endangered, it highly behoves us to amend it in such a manner as will prevent the evils which may arise from it as it now stands. My objections to it do not arise from a view of the particular situation of the western part of this state, although certainly we are bound, by every principle, to attend to the interest of our fellow-citizens in that quarter; but from an apprehension that the principle pervades all America, and that, in its operation, it will be found highly injurious to the Southern States. It will, I presume, be readily admitted that the dismemberment of empire is the highest act of sovereign authority, the exercise of which can be authorized

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only by absolute necessity. Exclusive, then, sir, of any consideration which arises from the particular system of American politics, the guard established against the exercise of this power is by far too slender.

The President, with the concurrence of two thirds of the Senate present, may make a treaty, by which any territory may be ceded, or the navigation of any river surrendered; thereby granting to five states the exercise of a right acknowledged to be the highest act of sovereignty — to fifteen men, not the representatives of the country to be ceded, but, as has already happened, men whose interest and policy it may be to make such surrender. Admitting, for a moment, that this point is as well guarded by the proposed plan as by the old Articles of Confederation, (to which, however, common sense can never assent,) have we not already had cause to tremble, and ought we not to guard against the accomplishment of a scheme to which nothing but an inattention to the general interest of America, and a selfish regard to the interest of particular states, could have given rise? Surely, sir, we ought; and since we have already seen a diabolical attempt made to surrender the navigation of a river, the source of which is as yet unknown, and on which depends the importance of the southern part of America; since we have every reason to believe that the same principle which at first dictated this measure, still exists, and will forever operate; it is our duty — a duty which we owe to ourselves, which we owe to the southern part of America, and which we owe to the natural rights of mankind — to guard against it in such manner as will forever prevent its accomplishment. This, sir, is not done by the clause, nor will it rest on that sure footing which I wish, and which the importance of the subject demands, until the concurrence of three fourths *of all the senators* shall be requisite to ratify a treaty respecting the cession of territory, the surrender of the navigation of rivers, or the use of all the American seas.

That sacred palladium of liberty, the freedom of the press, (the influence of which is so great that it is the opinion of the ablest writers that no country can remain long in slavery where it is unrestrained,) has not been expressed; nor are the liberties of the people ascertained and protected by any declaration of rights; that inestimable privilege, (the most important which freemen can enjoy,) the trial by jury in all

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civil cases, has not been guarded by the system;—and while they have been inattentive to these all-important considerations, they have made provision for the introduction of standing armies in time of peace. These, sir, ever have been used as the grand machines to suppress the liberties of the people, and will ever awaken the jealousy of republicans, so long as liberty is dear, and tyranny odious, to mankind.

Congress, sir, have the power to declare war, and also to raise and support armies; and if we suppose them to be a representation of the states, the *nexus imperii* of the British constitution is here lost. There the king has the power of declaring war, and the Parliament that of raising money to support it. Governments ought not to depend on an army for their support, but ought to be so formed as to have the confidence, respect, and affection of the citizens. Some degree of virtue, sir, must exist, or freedom cannot live. A standing army will introduce idleness and extravagance, which will be followed by their sure concomitant vices. In a country extensive like ours, the power of the sword is more sensibly felt than in a small community. The advantages, sir, of military science and discipline cannot be exerted unless a proper number of soldiers are united in one body, and actuated by one soul. The tyrant of a single town, or a small district, would soon discover that a hundred armed soldiers were a weak defence against ten thousand peasants or citizens; but ten thousand well-disciplined soldiers will command, with despotic sway, millions of subjects, and will strike terror into the most numerous populace. It was this, sir, which enabled the pretorian bands of Rome, whose number scarcely amounted to ten thousand, after having violated the sanctity of the throne by the atrocious murder of a most excellent emperor, to dishonor the majesty of it, by proclaiming that the Roman empire — the mistress of the world—was to be disposed of, to the highest bidder, at public auction;—and to their licentious frenzy may be attributed the *first* cause of the decline and fall of that mighty empire. We ought, therefore, strictly to guard against the establishment of an army—whose only occupation would be idleness; whose only effort the introduction of vice and dissipation; and who would, at some future day, deprive us of our liberties, as a reward for past favors, by the introduction of some military despot.

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I had it in contemplation to have made some observations on the disposition of the judicial powers; but, as my knowledge in that line is confined, and as the subject has been so ably handled by other gentlemen, and the defects clearly developed, and as their arguments remain unanswered, I shall say nothing on that head. The want of responsibility to the people from their representatives would furnish matter of ample discussion; but I pass it over in silence, only observing that it is a grand, and indeed a daring fault, and one which sanctions with security the most tyrannic edicts of a despotic ruler. The ambiguous terms in which all rights are secured to the people, and the clear and comprehensive language used when power is granted to Congress, also afford matter for suspicions and objections; but the able manner in which my very worthy, my very eloquent, and truly patriotic friend and coadjutor, whose name shall ever be hallowed in the temple of liberty, has handled this subject, would render any observations from me tedious and unnecessary.

Permit me, then, to conclude by reminding gentlemen who appeal to history to prove the excellence of the proposed plan, that their mode of comparison is unjust. "Wealth and extent of territory," says the great Montesquieu, "have a relation to government, and the manners and customs of the people are closely connected with it." The same system of policy which might have been excellent in the governments of antiquity would not, probably, suit us at the present day. The question, therefore, which should be agitated, is, not whether the proposed Constitution is better or worse than those which have from time to time existed, but whether it is calculated to secure our liberties and happiness at the present stage of the world.

For my own part, after an impartial investigation of it, and after a close attention and candid consideration of the arguments which have been used, I am impressed with an opinion that it is not. I am persuaded that, by adopting it, and then proposing amendments, that unfortunate traveller, Liberty, is more endangered than the union of the states will be by first proposing these amendments. I am so far an enthusiast in favor of liberty, that I never will trust the sacred deposit to other hands, nor will I exchange it for any earthly consideration; and I have such a fixed aversion to the bitter

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cup of slavery, that, in my estimation, a draught is not sweetened, whether administered by the hand of a Turk, a Briton, or an American.

Impressed, then, sir, with these sentiments, and governed by these principles, I shall decidedly give my vote in favor of previous amendments. But, sir, should the question be decided contrary to my wishes, the first wish of my heart is, that the decision may promote the happiness and prosperity of the country so dear to us all.

Mr. GRAYSON. Mr. Chairman, gentlemen have misrepresented what I said on the subject of *treaties*. On this ground let us appeal to the law of nations. How does it stand? Thus — that without the consent of the national legislature, dismemberment cannot be made. This is a subject in which Virginia is deeply interested, and ought to be well understood. It ought to be expressly provided that no dismemberment should take place without the consent of the legislature. On this occasion, I beg leave to introduce an instance mentioned on the floor of Congress. Francis, king of France, was taken by the Spaniards at the battle of Pavia. He stipulated to give up certain territories, to be liberated. Yet the stipulation was not complied with, because it was alleged that it was not made by the sovereign power. Let us apply this. Congress has a right to dismember the empire. The President may do it, and the legislature may confirm it. Let gentlemen contradict it if they can. This is one of the highest acts of sovereignty, and I think it of the utmost importance that it should be placed on a proper footing. There is an absolute necessity for the existence of the power. It may prevent the annihilation of society by procuring a peace. It must be lodged somewhere. The opposition wish it to be put in the hands of three fourths of the members of both houses of Congress. It would be then secure. It is not so now.

The dangers of disunion were painted in strong colors. How is the fact? It is this — that, if Virginia thinks proper to insist on previous amendments, joined by New York and North Carolina, she can procure what amendments she pleases. What is the geographical position of these states? New York commands the ocean. Virginia and North Carolina join the Spanish dominions. What would be the situation, then, of the other states? They would be topographi-

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cally separated, though politically connected with one another. There would be no communication between the centre and the component parts. While those states were thus separated, of what advantage would commercial regulations be to them? Yet will gentlemen pretend to say that we must adopt first, and then beg for amendments? I see no reason in it. We undervalue our own importance. Consider the vast consequence and importance of Virginia and North Carolina. What kind of connection would the rest of the states form? They would be carrying states, without having any thing to carry. They could have no communication with the other Southern States. I therefore insist that, if you are not satisfied with the paper as it stands, it is as clear to me as that the sun shines, that, by joining these two states, you may command such amendments as you may think necessary for the happiness of the people.

The late Convention were not empowered totally to alter the present Confederation. The idea was to *amend*. If they lay before us a thing quite different, we are not bound to accept it. There is nothing dictatorial in refusing it: we wish to remove the spirit of party. In all parts of the world there is a reciprocity in contracts and compacts. If one man makes a proposition to another, is he bound to accept it?

Six or seven states have agreed to it. As it is not their interest to stand by themselves, will they not with open arms receive us? Tobacco will always make our peace with them. I hope, then, that the honorable gentleman will find, on a reconsideration, that we are not at all in that dangerous situation he represented. In my opinion, the idea of subsequent amendments is preposterous. They are words without meaning. The little states will not agree to an alteration. When they find themselves on an equal footing with the other states in the Senate, and all power vested in them, — the executive mixed with the legislative, — they will never assent. Why are such extensive powers given to the Senate? Because the little states gained their point. In every light I consider subsequent amendments as unwise and impolitic.

Considering the situation of the continent, this is not a time for changing our government. I do not think we stand so secure with respect to other nations as to change our government. The nations of Europe look with watchful eyes

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on us, and with reason; for the West India islands depend on our motions. When we have strength, importance, and union, they will have reason to tremble for their islands' Almost all the governments of the world have been formed by accident. We are now, in time of peace, without any real cause, changing our government. We ought to be cool and temperate, and not act like the people of Denmark, who gave up their liberties, in a transport of passion, to the crown. Let us therefore be cautious, and deliberate before we determine.

What is the situation of Virginia? She is rich when her resources are compared with those of others. Is it right for a rich nation to consolidate with a poor one? By no means. It was right for Scotland to unite with England, as experience has shown. Scotland only pays forty-eight thousand pounds, when England pays four shillings in the pound, which amounts to two million pounds. In all unions where a rich state is joined with a poor one, it will be found that the rich one will pay in that disproportion. A union between such nations ought never to take place, except in peculiar circumstances, and on very particular conditions. How is it with Virginia? It is politic for her to unite, but not on any terms. She will pay more than her natural proportion, and the present state of the national debt renders it an object. She will also lose her importance. She is now put in the same situation as a state forty times smaller.

Does she gain any advantage from her central situation, by acceding to that paper? Within ten miles of Alexandria the centre of the states is said to be. It has not said that the ten miles square will be there. In a monarchy, the seat of government must be where the monarch pleases. How ought it to be in a republic like ours? — now in one part, and at another time in another, or where it will best suit the convenience of the people. Then I lay it down as a political right that the seat of government ought to be fixed by the Constitution, so as to suit the public convenience.

Has Virginia any gain from her riches and commerce? What does she get in return? I can see what she gives up, which is immense. The little states gain in proportion as we lose. Every disproportion is against us. If the effects of such a contrariety of interests be happy, it must be extra ordinary and wonderful. From the very nature of the pa-

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per, one part, whose interest is different from the other, is to govern it. What will be our situation? The Northern States are carrying states. We are considered as productive states. They will consequently carry for us. Are manufactures favorable to us? If they reciprocate the act of Charles II., and say that no produce of America will be carried in any foreign bottom, what will be the consequence? This — that all the produce of the Southern States will be carried by the Northern States on their own terms, which must be very high.

Though this government has the power of taxation, and the most important subject of the legislation, there is no responsibility any where. The members of Delaware do not return to Virginia to give an account of their conduct. Yet they legislate for us. In addition to this, it will be productive of great expenses. Virginia has assumed an immense weight of private debt, and her imports and exports are taken away. Judge, then, how such an accumulation of expenses will accommodate us. I think that, were it not for one great character in America, so many men would not be for this government. We have one ray of hope. We do not fear while he lives; but we can only expect his *fame* to be immortal. We wish to know who, besides him, can concentrate the confidence and affections of all America.

He then concluded by expressing hopes that the proposition of his honorable friend would be acceded to.

Mr. MADISON. Mr. Chairman, nothing has excited more admiration in the world than the manner in which free governments have been established in America; for it was the first instance, from the creation of the world to the American revolution, that free inhabitants have been seen deliberating on a form of government, and selecting such of their citizens as possessed their confidence, to determine upon and give effect to it. But why has this excited so much wonder and applause? Because it is of so much magnitude, and because it is liable to be frustrated by so many accidents. If it has excited so much wonder that the United States have, in the middle of war and confusion, formed free systems of government, how much more astonishment and admiration will be excited, should they be able, peaceably, freely, and satisfactorily, to establish one general

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government, when there is such a diversity of opinions and interests — when not cemented or stimulated by any common danger! How vast must be the difficulty of concentrating, in one government, the interests, and conciliating the opinions, of so many different, heterogeneous bodies!

How have the confederacies of ancient and modern times been formed? As far as ancient history describes the former to us, they were brought about by the wisdom of some eminent sage. How was the imperfect union of the Swiss cantons formed? By danger. How was the confederacy of the United Netherlands formed? By the same. They are surrounded by dangers. By these, and one influential character, they were stimulated to unite. How was the Germanic system formed? By danger, in some degree, but principally by the overruling influence of individuals.

When we consider this government, we ought to make great allowances. We must calculate the impossibility that every state should be gratified in its wishes, and much less that every individual should receive this gratification. It has never been denied, by the friends of the paper on the table, that it has defects; but they do not think that it contains any real danger. They conceive that they will, in all probability, be removed, when experience will show it to be necessary. I beg that gentlemen, in deliberating on this subject, would consider the alternative. Either nine states shall have ratified it, or they will not. If nine states will adopt it, can it be reasonably presumed, or required, that nine states, having freely and fully considered the subject, and come to an affirmative decision, will, upon the demand of a single state, agree that they acted wrong, and could not see its defects — tread back the steps which they have taken, and come forward, and reduce it to uncertainty whether a general system shall be adopted or not? Virginia has always heretofore spoken the language of respect to the other states, and she has always been attended to. Will it be that language to call on a great majority of the states to acknowledge that they have done wrong? Is it the language of confidence to say that we do not believe that amendments for the preservation of the common liberty, and general interests, of the states, will be consented to by them? This is the language neither of confidence nor respect. Virginia, when she speaks respectfully, will be as much at-

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tended to as she has hitherto been when speaking this language.

It is a most awful thing that depends on our decision — no less than whether the thirteen states shall unite freely, peaceably, and unanimously, for security of their common happiness and liberty, or whether every thing is to be put in confusion and disorder. Are we to embark in this dangerous enterprise, uniting various opinions to contrary interests, with the vain hope of coming to an amicable concurrence?

It is worthy of our consideration that those who prepared the paper on the table found difficulties not to be described in its formation: mutual deference and concession were absolutely necessary. Had they been inflexibly tenacious of their individual opinions, they would never have concurred. Under what circumstances was it formed? When no party was formed, or particular proposition made, and men's minds were calm and dispassionate. Yet, under these circumstances, it was difficult, extremely difficult, to agree to any general system.

Suppose eight states only should ratify, and Virginia should propose certain alterations, as the previous condition of her accession. If they should be disposed to accede tc her proposition, which is the most favorable conclusion, the difficulty attending it will be immense. Every state which has decided it, must take up the subject again. They must not only have the mortification of acknowledging that they had done wrong, but the difficulty of having a reconsideration of it among the people, and appointing new conventions to deliberate upon it. They must attend to *all* the amendments, which may be dictated by as great a diversity of political opinions as there are local attachments. When brought together in one assembly, they must go through, and accede to, every one of the amendments. The gentlemen who, within this house, have thought proper to propose previous amendments, have brought no less than forty amendments, a bill of rights which contains twenty amendments, and twenty other alterations, some of which are improper and inadmissible. Will not every state think herself equally entitled to propose as many amendments? And suppose them to be contradictory! I leave it to this Convention whether it be probable that they can agree, or agree to

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any thing but the plan on the table; or whether greater difficulties will not be encountered than were experienced in the progress of the formation of the Constitution.

I have said that there was a great contrariety of opinions among the gentlemen in the opposition. It has been heard in every stage of their opposition. I can see, from their amendments, that very great sacrifices have been made by some of them. Some gentlemen think that it contains too much state influence; others, that it is a complete consolidation; and a variety of other things. Some of them think that the equality in the Senate is not a defect; others, that it is the bane of all good government. I might, if there were time, show a variety of other cases where their opinions are contradictory. If there be this contrariety of opinions in this house, what contrariety may not be expected, when we take into view thirteen conventions equally or more numerous! Besides, it is notorious, from the debates which have been published, that there is no sort of uniformity in the grounds of the opposition.

The state of New York has been adduced. Many in that state are opposed to it from local views. The two who opposed it in the general Convention from that state are in the state Convention. Every step of this system was opposed by those two gentlemen. They were unwilling to part with the old Confederation. Can it be presumed, then, sir, that gentlemen in this state, who admit the necessity of changing, should ever be able to unite in sentiments with those who are totally averse to any change?

I have revolved this question in my mind with as much serious attention, and called to my aid as much information, as I could, yet I can see no reason for the apprehensions of gentlemen; but I think that the most happy effects for this country would result from adoption, and if Virginia will agree to ratify this system, I shall look upon it as one of the most fortunate events that ever happened for human nature. I cannot, therefore, without the most excruciating apprehensions, see a possibility of losing its blessings. It gives me infinite pain to reflect that all the earnest endeavors of the warmest friends of their country to introduce a system promotive of our happiness, may be blasted by a rejection, for which I think, with my honorable friend, that previous amendments are but another name. The gentlemen in op-

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position seem to insist on those amendments, as if they were all necessary for the liberty and happiness of the people. Were I to hazard an opinion on the subject, I would declare it infinitely more safe, in its present form, than it would be after introducing into it that long train of alterations which they call amendments.

With respect to the proposition of the honorable gentleman to my left, (Mr. Wythe,) gentlemen apprehend that, by enumerating three rights, it implied there were no more. The observations made by a gentleman lately up; on that subject, correspond precisely with my opinion. That resolution declares that the powers granted by the proposed Constitution are the gift of the people, and may be resumed by them when perverted to their oppression, and every power not granted thereby remains with the people, and at their will. It adds, likewise, that no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the general government, or any of its officers, except in those instances in which power is given by the Constitution for these purposes. There cannot be a more positive and unequivocal declaration of the principle of the adoption—that every thing not granted is reserved. This is obviously and self-evidently the case, without the declaration. Can the general government exercise any power not delegated? If an enumeration be made of our rights, will it not be implied that every thing omitted is given to the general government? Has not the honorable gentleman himself admitted that an imperfect enumeration is dangerous? Does the Constitution say that they shall not alter the law of descents, or do those things which would subvert the whole system of the state laws? If it did, what was not excepted would be granted. Does it follow, from the omission of such restrictions, that they can exercise powers not delegated? The reverse of the proposition holds. The delegation alone warrants the exercise of any power.

With respect to *the amendments* proposed by the honorable gentleman, it ought to be considered how far they are good. As far as they are palpably and insuperably objectionable, they ought to be opposed. One amendment he proposes is, that any army which shall be necessary shall be raised by the consent of two thirds of the states. I most devoutly wish that there may never be an occasion for having

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a single regiment. There can be no harm in declaring that standing armies, in time of peace, are dangerous to liberty, and ought to be avoided, as far as it may be consistent with the protection of the community. But when we come to say that the national security shall depend, not on a majority of the people of America, but that it may be frustrated by less than one third of the people of America, I ask if this be a safe or proper mode. What parts of the United States are most likely to stand in need of this protection? The weak parts, which are the Southern States. Will it be safe to leave the United States at the mercy of one third of the states — a number which may comprise a very small proportion of the American people? They may all be in that part of America which is least exposed to danger. As far as a remote situation from danger would render exertions for public defence less active, so far the Southern States would be endangered.

The regulation of *commerce*, he further proposed, should depend on two thirds of both houses. I wish I could recollect the history of this matter; but I cannot call it to mind with sufficient exactness. But I well recollect the reasoning of some gentlemen on that subject. It was said, and I believe with truth, that every part of America does not stand in equal need of security. It was observed that the Northern States were most competent to their own safety. Was it reasonable, asked they, that they should bind themselves to the defence of the Southern States, and still be left at the mercy of the minority for commercial advantages? Should it be in the power of the minority to deprive them of this and other advantages, when they were bound to defend the whole Union, it might be a disadvantage for them to confederate.

These were his arguments. This policy of guarding against political inconveniences, by enabling a small part of the community to oppose the government, and subjecting the majority to a small minority, is fallacious. In some cases it may be good; in others it may be fatal. In all cases, it puts it in the power of the minority to decide a question which concerns the majority.

I was struck with surprise when I heard him express himself alarmed with respect to the emancipation of slaves. Let me ask, if they should even attempt it, if it will not be

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a usurpation of power. There is no power to warrant it, in that paper. If there be, I know it not. But why should it be done? Says the honorable gentleman, for the general welfare: it will infuse strength into our system. Can any member of this committee suppose that it will increase our strength? Can any one believe that the American councils will come into a measure which will strip them of their property, and discourage and alienate the affections of five thirteenths of the Union? Why was nothing of this sort aimed at before? I believe such an idea never entered into any American breast, nor do I believe it ever will enter into the heads of those gentlemen who substitute unsupported suspicions for reasons.

I am persuaded that the gentlemen who contend for previous amendments are not aware of the dangers which must result. Virginia, after having made opposition, will be obliged to recede from it. Might not the nine states say, with a great deal of propriety, "It is not proper, decent, or right, in you, to demand that we should reverse what we have done. Do as we have done; place confidence in us, as we have done in one another; and then we shall freely, fairly, and dispassionately consider and investigate your propositions, and endeavor to gratify your wishes. But if you do not do this, it is more reasonable that you should yield to us than we to you. You cannot exist without us; you must be a member of the Union.

The case of Maryland, instanced by the gentleman, does not hold. She would not agree to confederate, because the other states would not assent to her claims of the western lands. Was she gratified? No; she put herself like the rest. Nor has she since been gratified. The lands are in the common stock of the Union.

As far as his amendments are not objectionable, or unsafe, so far they may be subsequently recommended — not because they are necessary, but because they can produce no possible danger, and may gratify some gentlemen's wishes. But I never can consent to his previous amendments, because they are pregnant with dreadful dangers.

Mr. HENRY. Mr. Chairman, the honorable gentleman who was up some time ago exhorts us not to fall into a repetition of the defects of the Confederation. He said we ought not to declare that each state retains every power, jurisdiction, and right, which is not expressly delegated, be-

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cause experience has proved the insertion of such a restriction to be destructive, and mentioned an instance to prove it. That case, Mr. Chairman, appears to me to militate against himself. Passports would not be given by Congress — and why? Because there was a clause in the Confederation which denied them implied powers. And says he, Shall we repeat the error? He asked me where was the power of emancipating slaves. I say it will be implied, unless implication be prohibited. He admits that the power of granting passports will be in the new Congress without the insertion of this restriction; yet he can show me nothing like such a power granted in that Constitution. Notwithstanding he admits their right to this power by implication, he says that I am unfair and uncandid in my deduction that they can emancipate our slaves, though the word *emancipation* is not mentioned in it. They can exercise power by implication in one instance, as well as in another. Thus, by the gentleman's own argument, they can exercise the power, though it be not delegated.

We were then told that the power of treaties and commerce was the *sine qua non* of the Union; that the little states would not confederate otherwise. There is a thing not present to human view. We have seen great concessions from the large states to the little states. But little concessions from the little states to the great states will be refused. He concedes that great concessions were made in the great Convention. Now, when we speak of rights, and not of emoluments, these little states would not have been affected. What boon did we ask? We demanded only rights which ought to be unalienable and sacred. We have nothing local to ask. We ask rights which concern the general happiness. Must not justice bring them into the concession of these? The honorable gentleman was pleased to say that the new government, in this policy, will be equal to what the present is. If so, that amendment will not injure that part.

He then mentioned the danger that would arise from foreign gold. We may be bribed by foreign powers if we ask for amendments, to secure our own happiness. Are we to be bribed to forget our own interests? I will ask, if foreign gold be likely to operate, where will it be? In the seat of government, or in those little channels in which the state

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authority will flow? It will be at the fountain of power, where bribery will not be detected. He speaks of war and bloodshed. Whence do this war and bloodshed come? I fear it, but not from the source he speaks of. I fear it, sir, from the operation and friends of the federal government. He speaks with contempt of this amendment. But whoever will advert to the use made repeatedly, in England, of the prerogative of the king, and the frequent attacks on the privileges of the people, notwithstanding many legislative acts to secure them, will see the necessity of excluding implications. Nations who have trusted to logical deduction have lost their liberty.

The honorable gentleman last up agrees that there are defects, and by and by, he says there is no defect. Does not this amount to a declaration that subsequent amendments are not necessary? His arguments, great as the gentleman's abilities are, tend to prove that amendments cannot be obtained after adoption. Speaking of forty amendments, he calculated that it was something like impracticability to obtain them. I appeal, therefore, to the candor of the honorable gentleman, and this committee, whether amendments be not absolutely unattainable, if we adopt; for he has told us that, if the other states will do like this, they cannot be previously obtained. Will the gentleman bring this home to himself? This is a piece of information which I expected. The worthy member who proposed to ratify has also proposed that what amendments may be deemed necessary should be recommended to Congress, and that a committee should be appointed to consider what amendments were necessary. But what does it all come to at last? That it is a vain project, and that it is indecent and improper. I will not argue unfairly, but I will ask him if amendments are not unattainable. Will gentlemen, then, lay their hands on their hearts, and say that they can adopt it in this shape? When we demand this security of our privileges, the language of Virginia is not that of respect! Give me leave to deny. She only asks amendments previous to her adoption of the Constitution.

Was the honorable gentleman accurate, when he said that they could exist better without us than we could without them? I will make no comparison. But I will say that the states which have adopted will not make a re-

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spectable appearance without us. Would he advise them to refuse us admission when we profess ourselves friends to the Union, and only solicit them to secure our rights? We do not reject a connection with them. We only declare that we will adopt it, if they will but consent to the security of rights essential to the general happiness.

He told you to confine yourselves to amendments which were indisputably true, as applying to several parts of the system proposed. Did you hear any thing like the admission of the want of such amendments from any one else? I will not insist on any that does not stand on the broad basis of human rights. He says there are forty. I say there is but one half the number, for the bill of rights is but one amendment.

He tells you of the important blessings which he imagines will result to us and mankind in general from the adoption of this system. I see the awful immensity of the dangers with which it is pregnant. I see it. I feel it. I see beings of a higher order anxious concerning our decision. When I see beyond the horizon that bounds human eyes, and look at the final consummation of all human things, and see those intelligent beings which inhabit the ethereal mansions reviewing the political decisions and revolutions which, in the progress of time, will happen in America, and the consequent happiness or misery of mankind, I am led to believe that much of the account, on one side or the other, will depend on what we now decide. Our own happiness alone is not affected by the event. All nations are interested in the determination. We have it in our power to secure the happiness of one half of the human race. Its adoption may involve the misery of the other hemisphere.

[Here a violent storm arose, which put the house in such disorder, that Mr. Henry was obliged to conclude.]

Mr. NICHOLAS proposed that the question should be put at nine o'clock next day.

He was opposed by Mr. CLAY.

Mr. RONALD also opposed the motion, and wished amendments to be prepared by a committee, before the question should be put.

Mr. NICHOLAS contended that the language of the proposed ratification would secure every thing which gentlemen desired, as it declared that all powers vested in the

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Constitution were derived from the people, and might be resumed by them whensoever they should be perverted to their injury and oppression; and that every power not granted thereby remained at their will. No danger whatever could arise; for, says he, these expressions will become a part of the contract. The Constitution cannot be binding on Virginia, but with these conditions. If thirteen individuals are about to make a contract, and one agrees to it, but at the same time declares that he understands its meaning, signification, and intent, to be, (what the words of the contract plainly and obviously denote,) that it is not to be construed so as to impose any supplementary condition upon him, and that he is to be exonerated from it whensoever any such imposition shall be attempted, — I ask whether, in this case, these conditions, on which he has assented to it, would not be binding on the other twelve. In like manner these conditions will be binding on Congress. They can exercise no power that is not expressly granted them.

Mr. RONALD. Mr. Chairman, I came hither with a determination to give my vote so as to secure the liberty and privileges of my constituents. I thought that a great majority argued that amendments were necessary. Such is my opinion; but whether they ought to be previous or subsequent to our adoption, I leave to the wisdom of this committee to determine. I feel an earnest desire to know what amendments shall be proposed, before the question be put. One honorable gentleman has proposed several amendments. They are objected to by other gentlemen. I do not declare myself for or against those amendments; but unless I see such amendments, one way or the other, introduced, as will secure the happiness of the people, and prevent their privileges from being endangered, I must, though much against my inclination, vote against this Constitution.

Mr. MADISON conceived that what defects might be in the Constitution might be removed by the amendatory mode in itself. As to a solemn declaration of our essential rights, he thought it unnecessary and dangerous — unnecessary, because it was evident that the general government had no power but what was given it, and that the delegation alone warranted the exercise of power; dangerous, because an enumeration which is not complete is not safe. Such an enumeration could not be made, within any compass of time,

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as would be equal to a general negation, such as his honorable friend (Mr. Wythe) had proposed. He declared that such amendments as seemed, in his judgment, to be without danger, he would readily admit, and that he would be the last to oppose any such amendment as would give satisfaction to any gentleman, unless it were dangerous.

WEDNESDAY, *June* 25, 1788.

Mr. NICHOLAS. Mr. Chairman, I do not mean to enter into any further debate. The friends of the Constitution wish to take up no more time, the matter being now fully discussed. They are convinced that further time will answer no end but to serve the cause of those who wish to destroy the Constitution. We wish it to be ratified, and such amendments as may be thought necessary to be subsequently considered by a committee, in order to be recommended to Congress, to be acted upon according to the amendatory mode presented in itself. Gentlemen in the opposition have said that the friends of the Constitution would depart after the adoption, without entering into any consideration of subsequent amendments. I wish to know their authority. I wish for subsequent amendments as a friend to the Constitution; I trust its other friends wish so too; and I believe no gentleman has any intention of departing. The amendments contained in this paper are those we wish; but we shall agree to any others which will not destroy the spirit of the Constitution, or that will better secure liberty.

He then moved that the clerk should read the resolution proposed by Mr. Wythe, in order that the question might be put upon it; which being done, Mr. TYLER moved to read the amendments and bill of rights proposed by Mr. Henry, for the same purpose.

Mr. HARRISON. Mr. Chairman, the little states refused to come into the Union without extravagant concessions. It will be the same case on every other occasion. Can it be supposed that the little states, whose interest and importance are greatly advanced by the Constitution as it now stands, will ever agree to any alteration which must infallibly diminish their political influence? On this occasion, let us behave with that fortitude which animated us in our resistance to Great Britain.

The situation and disposition of the states render subse

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quent amendments dangerous and impolitic, and previous amendments eligible.

New Hampshire does not approve of the Constitution as it stands.

They have refused it so. In *Massachusetts*, we are told that there was a decided majority in their Convention who opposed the Constitution as it stood, and were in favor of previous amendments, but were afterwards, by the address and artifice of the federalists, prevailed upon to ratify it.

Rhode Island is not worthy the attention of this house. She is of no weight or importance to influence any general subject of consequence.

Connecticut adopted it, without proposing amendments.

New York, we have every reason to believe, will reject the Constitution, unless amendments be obtained. Hence it clearly appears that there are three states which wish for amendments.

Jersey, *Pennsylvania*, and *Delaware*, have adopted it unconditionally.

In *Maryland*, there is a considerable number who wish amendments to be had.

Virginia is divided, let this question be determined which way it will. One half of the people, at least, wish amendments to be obtained.

North Carolina is decidedly against it. *South Carolina* has proposed amendments.

Under this representation, it appears that there are seven states who wish to get amendments. Can it be doubted, if the seven states insert amendments as the condition of their accession, that they would be agreed to? Let us not, then, be persuaded into an opinion that the Union will be dissolved if we should reject it. I have no such idea.

As far as I am acquainted with history, there never existed a constitution where the liberty of the people was established in this way. States have risen by gradual steps: let us follow their example. The line which we ought to pursue is equally bounded. How comes that paper on your table to be now here discussed? The state of Virginia, finding the power of the Confederation insufficient for the happiness of the people, invited the other states to call a convention, in order that the powers of Congress might be enlarged. I was not in the Assembly then; and if I had been,

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I have no vanity to suppose I could have decided more cautiously. They were bound to do what we ought to do now. I have no idea of danger to the Union. A vast majority, from every calculation, are invincibly attached to it. I see an earnest desire in gentlemen to bring this country to be great and powerful. Considering the very late period when this country was first settled, and the present state of population and wealth, this is impossible now. The attempt will bring ruin and destruction upon us. These things must not be forced. They must come of course, like the course of rivers, gently going on. As to the inconveniences, to me, from adoption, they are none at all. I am not prejudiced against New England, or any part. They are held up to us as a people from whom protection will come. Will any protection come from thence for many years? When we were invaded, did any gentleman from the Northern States come to relieve us? No, sir, we were left to be buffeted. General Washington, in the greatness of his soul, came with the French auxiliaries, and relieved us opportunely. Were it not for this, we should have been ruined. I call Heaven to witness that I am a friend to the Union. But I conceive the measure of adoption to be unwarrantable, precipitate, and dangerously impolitic. Should we rush into sudden perdition, I should resist with the fortitude of a man. As to the amendments proposed by gentlemen, I do not object to them: they are inherently good. But they are put in the wrong place — subsequent instead of previous. [Mr. Harrison added other observations, which could not be heard.]

Mr. MADISON. Mr. Chairman, I should not have risen at all, were it not for what the honorable gentleman said. If there be any suspicions that, if the ratification be made, the friends of the system will withdraw their concurrence, and much more, their persons, it shall never be with my approbation. Permit me to remark that, if he has given us a true state of the disposition of the several members of the Union, there is no doubt they will agree to the same amendments after adoption. If we propose the conditional amendments, I entreat gentlemen to consider the distance to which they throw the ultimate settlement, and the extreme risk of perpetual disunion. They cannot but see how easy it will be to obtain subsequent amendments. They can be proposed when the legislatures of two thirds of the states

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shall make application for that purpose; and the legislatures of three fourths of the states, or conventions in the same, can fix the amendments so proposed. If there be an equal zeal in every state, can there be a doubt that they will concur in reasonable amendments? If, on the other hand, we call on the states to rescind what they have done, and confess that they have done wrong, and to consider the subject again, it will produce such unnecessary delays, and is pregnant with such infinite dangers, that I cannot contemplate it without horror. There are uncertainty and confusion on the one hand, and order, tranquillity, and certainty, on the other. Let us not hesitate to elect the latter alternative. Let us join with cordiality in those alterations we think proper. There is no friend to the Constitution but who will concur in that mode.

Mr. MONROE, after an exordium which could not be heard, remarking that the question now before the committee was, whether previous or subsequent amendments were the most prudent, strongly supported the former. He could not conceive that a conditional ratification would, in the most remote degree, endanger the Union; for that it was as clearly the interest of the adopting states to be united with Virginia, as it could be her interest to be in union with them. He demanded if they would arm the states against one another, and make themselves enemies of those who were respectable and powerful from their situation and numbers. He had no doubt that they would, in preference to such a desperate and violent measure, come forward and make a proposition to the other states, so far as it would be consistent with the general interest. Adopt it now, unconditionally, says he, and it will never be amended, not even when experience shall have proved its defects. An alteration will be a diminution of their power, and there will be great exertions made to prevent it. I have no dread that they will immediately infringe the dearest rights of the people, but that the operation of the government will be oppressive in process of time. Shall we not pursue the dictates of common sense, and the example of all free and wise nations, and insist on amendments with manly fortitude?

It is urged that there is an impossibility of getting previous amendments, and that a variety of circumstances concur to render it impracticable. This argument appears to

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me fallacious, and as a specious evasion. The same cause which has hitherto produced a spirit of unanimity, and a predilection for the Union, will hereafter produce the same effects.

How did *the federal Convention* meet? From the beginning of time, in any age or country, did ever men meet under so loose, uncurbed a commission? There was nothing to restrain them but their characters and reputation. They could not organize a system without defects. This cannot, then, be perfect. Is it not presumable that by subsequent attempts we shall make it more complete and perfect?

What are the great objections now made? Are they local? What are the amendments brought forth by my friends? Do they not contemplate the great interests of the people, and of the Union at large? I am satisfied, from what we have seen of the disposition of the other states, that, instead of disunion and national confusion, there will be harmony and perfect concord. Disunion is more to be apprehended from the adoption of a system reprobated by some, and allowed by all to be defective. The arguments of gentlemen have no weight on my mind. It is unnecessary to enter into the refutation of them. My honorable friends have done it highly to my satisfaction. Permit me only to observe, with respect to those amendments, that they are harmless. Do they change a feature of the Constitution? They secure our rights without altering a single feature. I trust, therefore, that gentlemen will concur with them.

Mr. INNES. Mr. Chairman, I have hitherto been silent on this great and interesting question. But my silence has not proceeded from a neutrality of sentiments, or a supineness of disposition. The session of the Court of Oyer and Terminer, at this time, has indispensably called my attention to the prosecutions for the commonwealth. Had I taken an earlier part in the discussion, my observations would have been desultory, and perhaps not satisfactory, not being apprized of all the arguments which had been used by gentlemen. We are now brought to that great part of the system where it is necessary for me to take a decided part. This is one of the most important questions that ever agitated the councils of America. When I see in this house,

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divided in opinion, several of those brave officers whom I have seen so gallantly fighting and bleeding for their country, the question is doubly interesting to me. I thought it would be the last of human events, that I should be on a different side from them on so awful an occasion. However painful and distressing to me the recollection of this diversity of sentiment may be, I am consoled by this reflection — that difference of opinion has a happy consequence; it aids discussion, and is a friend to truth. We ought (and I hope we have the temper) to be regulated by candor and moderation — without which, in a deliberative body, every thing with respect to the public good evaporates into nothing.

I came hither under a persuasion that the felicity of our country required that we should accede to this system; but I am free to declare that I came in with my mind open to conviction, and a predetermination to recede from my opinion, if I should find it to be erroneous. I have heard nothing hitherto that would warrant a change of one idea. The objections urged by the advocates of the opposition have been ably, and, in my conception, satisfactorily answered by the friends of the Constitution. I wish, instead of reasoning from possible abuses, that the government had been considered as an abstract position, drawn from the history of all nations and such theoretic opinions as experience has demonstrated to be right. I have waited to hear this mode of reasoning, but in vain. Instead of this, sir, horrors have been called up, chimeras suggested, and every terrific and melancholy idea adduced to prevent what I think indispensably necessary for our national honor, happiness, and safety — I mean the adoption of the system under consideration.

How are we to decide this question? Shall we take the system by way of subsequent amendments, or propose amendments as the previous condition of our adoption? Let us consider this question coolly. In my humble opinion, it transcends the power of this Convention to take it with previous amendments. If you take it so, I say that you transcend and violate the commission of the people; for, if it be taken with amendments, the opinions of the people at large ought to be consulted on them. Have they an opportunity of considering previous amendments? They have seen the Constitution, and sent us hither to adopt or reject it. Have we more latitude on this subject? If you propose

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previous amendments as the condition of your adoption, they may radically change the paper on the table, and the people will be bound by what they know not. Subsequent amendments would not have that effect. They would not operate till the people had an opportunity of considering and altering them, if they thought proper. They could have it in their power to give contrary directions to their members of Congress.

But I observe, with regret, that there is a general spirit of jealousy with respect to our *northern brethren*. Had we this political jealousy in 1775? If we had had, it would have damped our ardor and intrepidity, and prevented that unanimous resistance which enabled us to triumph over our enemies. It was not a Virginian, Carolinian, or Pennsylvanian, but the glorious name of an American, that extended from one end of the continent to the other, that was then beloved and confided in. Did we then expect that, in case of success, we should be armed against one another? I would have submitted to British tyranny rather than to northern tyranny, had what we have been told been true—that they had no part of that philanthropic spirit which cherishes fraternal affection, unites friends, enables them to achieve the most gallant exploits, and renders them formidable to other nations.

Gentlemen say that the states have not similar interests; that what will accommodate their interests will be incompatible with ours; and that the northern oppression will fetter and manacle the hands of the southern people. Wherein does the dissimilarity consist? Does not our existence as a nation depend on our union? Is it to be supposed that their principles will be so constuprated, and that they will be so blind to their own true interests, as to alienate the affections of the Southern States, and adopt measures which will produce discontents, and terminate in a dissolution of a union as necessary to their happiness as to ours? Will not brotherly affection rather be cultivated? Will not the great principles of reciprocal friendship and mutual amity be constantly inculcated, so as to conciliate all parts of the Union? This will be inevitably necessary, from the unity of their interests with ours. To suppose that they would act contrary to these principles, would be to suppose them to be not

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only destitute of honor and probity, but void of reason — not only bad, but mad men.

The honorable gentleman has warned us to guard against European politics. Shall we not be more able to set their machinations at defiance, by uniting our councils and strength, than by splitting into factions and divisions? Our divisions, and consequent debility, are the objects most ardently wished for by the nations of Europe. What cause induced Great Britain, and other European nations which had settlements in America, to keep their colonies in an infantine condition? What cause leads them to exclude our vessels from the West Indies? The fear of our becoming important and powerful. Will not they be perpetually stimulated by this fear? Will not they incessantly endeavor to depress us by force or stratagem? Is there no danger to be apprehended from Spain, whose extensive and invaluable possessions are in our vicinity? Will that nation rejoice at an augmentation of our strength or wealth?

But we are told that we need not be afraid of Great Britain. Will that great, that warlike, that vindictive nation lose the desire of revenging her losses and disgraces? Will she passively overlook flagrant violations of the treaty? Will she lose the desire of retrieving those laurels which are buried in America? Should I transfuse into the breast of a Briton that *amor patriæ* which so strongly predominates in my own, he would say, While I have a guinea, I shall give it to recover lost America!

But, says another gentleman, the maritime powers of Europe look with anxious and jealous eyes on you. While you are helpless, they will let you alone; but if you attempt to become respectable, they will crush you! Is this the language or consolation of an American? Must we acquiesce to continue in this situation? We should, by this way of reasoning, sacrifice our own honor and interests, to please those supercilious nations, and promote their interests; and, with every means of acquiring a powerful fleet, would never have a ship of the line. To promote their glory, we should become wretched and contemptible. Our national glory, our honor, our interests, forbid this disgraceful conduct. It may be said that the ancients, who deserved and acquired glory, have lost their liberty. Call to mind the many nations of Indians and cannibals that have lost it likewise.

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And who would not rather be a Roman, than one of those who hardly deserve to be enumerated among the human species?

This question is as important as the revolution which severed us from the British empire. It rests now to be determined whether America has in reality gained by that change which has been thought so glorious, and whether those hecatombs of American heroes, whose blood was so freely shed at the shrine of liberty, fell in vain, or whether we shall establish such a government as shall render America respectable and happy. I wish her not only to be internally possessed of political and civil liberty, but to be formidable, terrible, and dignified in war, and not depend on the ambitious princes of Europe for tranquillity, security, or safety. I ask, if the most petty of those princes, even the dey of Algiers, were to make war upon us, if the other states of Europe should keep a neutrality, whether we should not be reduced to the greatest distress? Is it not in the power of any maritime power to seize our vessels, and destroy our commerce, with impunity?

But we are told that the New Englanders mean to take our trade from us, and make us hewers of wood and carriers of water; and, the next moment, that they will emancipate our slaves! But how inconsistent is this! They tell you that the admission of the importation of slaves for twenty years shows that their policy is to keep us weak; and yet, the next moment, they tell you that they intend to set them free! If it be their object to corrupt and enervate us, will they emancipate our slaves? Thus they complain and argue against it on contradictory principles. The Constitution is to turn the world topsy-turvy, to make it answer their various purposes!

Can it be said that liberty of conscience is in danger? I observe on the side of the Constitution those who have been champions of religious liberty, an attack on which I would as soon resist as one on civil liberty. Do they employ consistent arguments to show that it is in danger? They inform you that Turks, Jews, Infidels, Christians, and all other sects, may be Presidents, and command the fleet and army, there being no test to be required; and yet the tyrannical and inquisitorial Congress will ask me, as a private citizen, what is my opinion on religion, and punish

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me if it does not conform to theirs. I cannot think the gentleman could be serious when he made these repugnant and incompatible objections.

With respect to previous amendments, what will be the consequence? Virginia first discovered the defects of the existing confederacy. When the legislature was sitting, a few years ago, they sent an invitation to the other states to make amendments to it. After some preparatory steps, the late federal Convention was called. To this were sent select deputies from all the states except Rhode Island. After five months spent in tedious and painful investigation, they, with great difficulty, devised the paper on the table; and it has been adopted by every state which has considered and discussed it. Virginia is about dictating again to the other states. Eight states have exercised their sovereignty in ratifying it. Yet, with a great deal of humility, we ask them to rescind, and make such alterations as the *ancient dominion* shall think proper. States are but an aggregate of individuals. Would not an individual spurn at such a requisition? They will say, It has been laid before you, and if you do not like it, consider the consequences. We are as free, sister Virginia, and as independent, as you are; we do not like to be dictated to by you. But, say gentlemen, we can afterwards come into the Union; we may come in at another time; that is, if they do not accede to our dictatorial mandate. They are not of such yielding, pliant stuff, as to revoke a decision founded on their most solemn deliberations, to gratify our capricious wishes.

After hearing the arguments on this subject, and finding such a variety of contradictory objections, I am the more averse to solicit another convention, from which I should expect great discord, and no good effect at all. Not doubting the sincerity of gentlemen's protestations, I say, the mode pointed out in the Constitution is much better; for, according to their mode, the Union would never be complete till the thirteen states had acceded to it, and eight states must rescind and revoke what they have done. By the paper before you, if two thirds of the states think amendments necessary, Congress are obliged to call a convention to propose amendments, which are to be submitted to the legislatures, or conventions, in three fourths of the states, the acquiescence of which will render them binding. Now, is there not a

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greater probability of obtaining the one than the other? Will not nine states more probably agree to any amendments than thirteen? The doctrine of chances is in favor of it.

Unless we in vain look for a perfect constitution, we ought to take it. In vain you will seek, from India to the pole, for a perfect constitution. Though it may have certain defects, yet I doubt whether any system more perfect can be obtained at this time. Let us no longer pursue chimerical and ridiculous systems. Let us try it: experience is the best test. It will bear equally on all the states from New Hampshire to Georgia; and as it will operate equally on all, they will all call for amendments; and whatever the spirit of America calls for, must doubtless take place immediately.

I consider Congress as ourselves, as our fellow-citizens, and no more different from us than our delegates in the state legislature. I consider them as having all a fellow-feeling for us, and that they will never forget that this government is that of the people. Under this impression, I conclude that they will never dare to go beyond the bounds prescribed in the Constitution, and that, as they are eligible and removable by ourselves, there is sufficient responsibility; for where the power of election frequently reverts to the people, and that reversion is unimpeded, there can be no danger. Upon the whole, this is the question — Shall it be adopted or rejected? With respect to previous amendments, they are equal to rejection. They are abhorrent to my mind. I consider them as the greatest of evils. I think myself bound to vote against every measure which I conceive to be a total rejection, than which nothing, in my conception, can be more imprudent, destructive, and calamitous.

Mr. TYLER. Mr. Chairman, I should have been satisfied with giving my vote on the question to-day; but, as I wish to hand down to posterity my opposition to this system, I conceive it to be my duty to declare the principles on which I disapprove it, and the cause of my opposition. I have seriously considered the subject in my mind, and when I consider the effects which may happen to this country from its adoption, I tremble at it. My opposition to it arose first from general principles, independent of any local consideration. But when I find that the Constitution is expressed in indefinite terms, in terms which the gentlemen who composed it do not all concur in the meaning of, — I say that,

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when it is thus liable to objections and different constructions, I find no rest in my mind. Those clauses which answer different constructions will be used to serve particular purposes. If the able members who composed it cannot agree on the construction of it, shall I be thought rash or wrong to pass censure on its ambiguity?

The worthy member last up has brought us to a degrading situation — that we have no right to propose amendments. I should have expected such language had we already adopted a Constitution which will preclude us from this advantage. If we propose to them to reconsider what they have done, and not rescind it, will it be dictating to them? I do not undertake to say that our amendments will bind other states: I hope no gentleman will be so weak as to say so. But no gentleman on the other side will deny our right of proposing amendments. Wherefore is it called dictatorial? It is not my wish that they should rescind but so much as will secure our peace and liberty. We wish to propose such amendments to the sister states as will reconcile all the states. Will gentlemen think this will dissolve the Union?

Among all the chimeras adduced on this occasion, we are intimidated with the fear of being attacked by the petty princes of Europe. The little predatory nations of Europe are to cross the Atlantic and fall upon us; and to avoid this, we must adopt this government, with all its defects. Are we to be frightened into its adoption?

The gentleman has objected to previous amendments, because the people did not know them. Have they seen their subsequent amendments?

[Here Mr. Innes rose, and explained the difference — that previous amendments would be binding on the people, though they had never seen them, and should have no opportunity of considering them before they should operate; but that subsequent amendments, being only recommendatory in their nature, could be reviewed by the people before they would become a part of the system; and, if they disapproved of them, they might direct their delegates in Congress to alter and modify them.]

Mr. TYLER then proceeded: I have seen their subsequent amendments, and, although they hold out something like the thing we wish, yet they have not entered pointedly and substantially into it. What have they said about direct taxation? They have said nothing on this subject. Is there any limitation of, or restriction on, the federal judicial

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power? I think not. So that gentlemen hold out the idea of amendments which will not alter one dangerous part of it. It contains many dangerous articles. No gentleman here can give such a construction of it as will give general satisfaction. Shall we be told that we shall be attacked by the Algerines, and that disunion will take place, unless we adopt it? Such language as this I did not expect here. Little did I think that matters would come to this, when we separated from the mother country. There, sir, every man is amenable to punishment. There is far less responsibility in this government. British tyranny would have been more tolerable. By our present government, every man is secure in his person, and the enjoyment of his property. There is no man who is not liable to be punished for misdeeds. I ask, What is it that disturbs men whose liberty is in the highest zenith? Human nature will always be the same. Men never were, nor ever will, be satisfied with their happiness.

They tell you that one letter's alteration will destroy it. I say that it is very far from being perfect. I ask, if it were put in immediate operation, whether the people could bear it — whether two bodies can tax the same species of property. The idea of two omnipotent powers is inconsistent. The natural tendency must be, either a revolt, or the destruction of the state governments, and a consolidation of them all into one general system. If we are to be consolidated, let it be on better grounds. So long as climate will have effect on men, so long will the different climates of the United States render us different. Therefore a consolidation is contrary to our nature, and can only be supported by an arbitrary government.

Previous and subsequent amendments are now the only dispute; and when gentlemen say that there is a greater probability of obtaining the one than the other, they accompany their assertions with no kind of argument. What is the reason that amendments cannot be got after ratification? Because we have granted power. Because the amendments you propose will diminish their power, and undo some clauses in that paper. This argument proves to me that they cannot be serious. It has been plainly proved to you that it is impracticable. Local advantages are given up, as well as the regulation of trade. When it is the case, will the little

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states agree to an alteration? When gentlemen insist on this, without producing any argument, they will find no credulity in me. Another convention ought to be had, whether the amendments be previous or subsequent. They say another convention is dangerous. How is this proved? It is only their assertion. Gentlemen tell us we shall be ruined without adoption. Is this reasonable? It does not appear so to me.

Much has been said on the subject of war by foreigners, and the Indians; but a great deal has been said in refutation of it. Give me leave to say that, from the situation of the powers of Europe at this time, no danger is to be apprehended from thence. Will the French go to war with you, if you do not pay them what you owe them? Will they thereby destroy that balance, to preserve which they have taken such immense trouble? But Great Britain will go to war with you, unless you comply with the treaty. Great Britain, which, to my sorrow, has monopolized our trade, is to go to war with us unless the law of treaties be binding. Is this reasonable? It is not the interest of Britain to quarrel with us. She will not hazard any measure which may tend to take our trade out of her hands. It is not the interest of Holland to see us destroyed or oppressed. It is the interest of every nation in Europe to keep up the balance of power, and therefore they will not suffer any nation to attack us, without immediately interfering.

But much is said of the propriety of our becoming a great and powerful nation. There is a great difference between offensive and defensive war. If we can defend ourselves, it is sufficient. Shall we sacrifice the peace and happiness of this country, to enable us to make wanton war?

My conduct throughout the revolution will justify me. I have invariably wished to oppose oppressions. It is true that I have now a paltry office. I am willing to give it up —away with it! It has no influence on my present conduct. I wish Congress to have the regulation of trade. I was of opinion that a partial regulation alone would not suffice. I was among those members who, a few years ago, proposed that regulation. I have lamented that I have put my hand to it, since this measure may have grown out of it. It was the hopes of our people to have their trade on a respectable footing. But it never entered into my head that

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we should quit liberty, and throw ourselves into the hands of an energetic government. Do you want men to be more free, or less free, than they are? Gentlemen have been called upon to show the causes of this measure. None have been shown. Gentlemen say we shall be ruined unless we adopt it. We must give up our opinions. We cannot judge for ourselves. I hope gentlemen, before this, have been satisfied that such language is improper. All states which have heretofore been lavish in the concession of power and relinquishment of privileges have lost their liberty. It has been often observed (and it cannot be too often observed) that liberty ought not to be given up without knowing the terms. The gentlemen themselves cannot agree in the construction of various clauses of it; and so long as this is the case, so long shall liberty be in danger.

Gentlemen say we are jealous. I am not jealous of this house. I could trust my life with them. If this Constitution were safer, I should not be afraid. But its defects warrant my suspicions and fears. We are not passing laws now, but laying the foundation on which laws are to be made. We ought, therefore, to be cautious how we decide. When I consider the Constitution in all its parts, I cannot but dread its operation. It contains a variety of powers too dangerous to be vested in any set of men whatsoever. Its power of direct taxation, the supremacy of the laws of the Union, and of treaties, are exceedingly dangerous. I have never heard any manner of calling the President to account for his conduct, nor even the members of the democratic branch of the government. We may turn out our ten members, but what can we do with the other fifty-five? The wisdom of Great Britain gave each state its own legislative assembly and judiciary, and a right to tax themselves. When they attempted to infringe that right, we declared war. This system violates that right. In the year 1781 the Assembly were obliged to pass a law, that forty members could pass laws I have heard many members say that it was a great departure from the constitution, and that it would lead to aristocracy. If we could not trust forty, can we trust ten? Those who lay a tax ought to be amenable to the payment of a proportionate share of it. I see nothing in their subsequent amendments going to this point — that we shall have a right to tax ourselves.

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But gentlemen say that this would destroy the Constitution. Of what avail, then, will their subsequent amendments be? Will gentlemen satisfy themselves that, when they adopt this Constitution, their country will be happy? Is not the country divided? Is it a happy government, which divides the people, and sets brother in opposition to brother? This measure has produced anarchy and confusion. We ought to have been unanimous, and gone side by side, as we went through the revolution. Instead of unanimity, it has produced a general diversity of opinions, which may terminate in the most unhappy consequences. We only wish to do away ambiguities, and establish our rights on clear and explicit terms. If this be done, we shall all be like one man—we shall unite and be happy. But if we adopt it in its present form, unanimity or concord can never take place. After adoption, we can never expect to see it amended; because they will consider requests and solicitations for amendments as in a high degree dictatorial. They will say, You have signed and sealed, and you cannot now retract.

When I review all these considerations, my heart is full, and can never be at peace till I see these defects removed. Our only consolation is the virtue of the present age. It is possible that, when they see the country divided, these politicians will reconcile the minds of their countrymen, by introducing such alterations as shall be deemed necessary. Were it not for this hope, I should be in despair. I shall say no more, but that I wish my name to be seen in the yeas and nays, that it may be known that my opposition arose from a full persuasion and conviction of its being dangerous to the liberties of my country.

Mr. STEPHEN addressed the chairman, but in so low a voice that he could not be distinctly heard. He described, in a feeling manner, the unhappy situation of the country, and the absolute necessity of preventing a dismemberment of the confederacy. I was, said he, sent hither to adopt the Constitution as it is; but such is my regard for my fellow-citizens, that I would concur in amendments. The gentlemen on the other side have adduced no reasons or proofs to convince us that the amendments should become a part of the system before ratification. What reason have we to suspect that persons who are chosen from among ourselves

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will not agree to the introduction of such amendments as will be desired by the people at large?

In all safe and free governments, there ought to be a judicious mixture in the three different kinds of government. This government is a compound of those different kinds. But the democratic kind preponderates, as it ought to do. The members of one branch are immediately chosen by the people; and the people also elect, in a secondary degree, the members of the other two. At present we have no confederate government. It exists but in name. The honorable gentleman asked, Where is the genius of America? What else but that genius has stimulated the people to reform that government which woful experience has proved to be totally inefficient? What has produced the unison of sentiments in the states on this subject? I expected that filial duty and affection would have impelled him to inquire for the genius of Virginia — that genius which formerly resisted British tyranny, and, in the language of manly intrepidity and fortitude, said to that nation, Thus far, and no farther, shall you proceed!

What has become of that genius which spoke that magnanimous language — that genius which produced the federal Convention? Yonder she is, in mournful attire, her hair dishevelled, distressed with grief and sorrow, supplicating our assistance against gorgons, fiends, and hydras, which are ready to devour her and carry desolation throughout her country. She bewails the decay of trade and neglect of agriculture — her farmers discouraged — her ship-carpenters, blacksmiths, and all other tradesmen, unemployed. She casts her eyes on these, and deplores her inability to relieve them. She sees and laments that the profit of her commerce goes to foreign states. She further bewails that all she can raise by taxation is inadequate to her necessities. She sees religion die by her side, public faith prostituted, and private confidence lost between man and man. Are the hearts of her citizens so deaf to compassion that they will not go to her relief? If they are so infatuated, the dire consequences may be easily foreseen. Expostulations must be made for the defection of Virginia, when Congress meets. They will inquire where she has lately discovered so much political wisdom — she that gave an immense tract of country to relieve the general distresses. Wherein consists her

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superiority to her friends of South Carolina and the respectable state of Massachusetts, who, to prevent a dissolution of the Union, adopted the Constitution, and proposed such amendments as they thought necessary, placing confidence in the other states, that they would accede to them?

After making several other remarks, he concluded by declaring that, in his opinion, they were about to determine whether we should be one of the United States or not.

Mr. ZACHARIAH JOHNSON. Mr. Chairman, I am now called upon to decide the greatest of all questions — a question which may involve the felicity or misery of myself and posterity. I have hitherto listened attentively to the arguments adduced by both sides, and attended to hear the discussion of the most complicated parts of the system by gentlemen of great abilities. Having now come to the ultimate stage of the investigation, I think it my duty to declare my sentiments on the subject. When I view the necessity of government among mankind, and its happy operation when judiciously constructed; and when I view the principles of this Constitution, and the satisfactory and liberal manner in which they have been developed by the gentleman in the chair, and several other gentlemen; and when I view, on the other hand, the strained construction which has been put, by the gentlemen on the other side, on every word and syllable, in endeavoring to prove oppressions which can never possibly happen, — my judgment is convinced of the safety and propriety of this system. This conviction has not arisen from a blind acquiescence or dependence on the assertions and opinions of others, but from a full persuasion of its rectitude, after an attentive and mature consideration of the subject; the arguments of other gentlemen having only confirmed the opinion which I had previously formed, and which I was determined to abandon, should I find it to be ill founded.

As to the principle of representation, I find it attended to in this government in the fullest manner. It is founded on absolute equality. When I see the power of electing the representatives — the principal branch — in the people at large — in those very persons who are the constituents of the state legislatures; when I find that the other branch is chosen by the state legislature; that the executive is eligible in a secondary degree by the people likewise, and that the

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terms of elections are short, and proportionate to the difficulty and magnitude of the objects which they are to act upon; and when, in addition to this, I find that no person holding *any office* under the United States shall be a member of either branch, — I say, when I review all these things, that I plainly see a security of the liberties of this country, to which we may safely trust. Were this government defective in this fundamental principle of representation, it would be so radical that it would admit of no remedy.

I shall consider several other parts which are much objected to. As to the regulation of the militia, I feel myself doubly interested. Having a numerous offspring, I am careful to prevent the establishment of any regulation that might entail oppression on them. When gentlemen of high abilities in this house, and whom I respect, tell us that the militia may be subjected to martial law in time of peace, and whensoever Congress may please, I am much astonished. My judgment is astray, and exceedingly undiscerning, if it can bear such a construction. Congress has only the power of arming and disciplining them. The states have the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress. When called into the actual service of the United States, they shall be subject to the marching orders of the United States. Then, and then only, it ought to be so. When we advert to the plain and obvious meaning of the words, without twisting and torturing their natural signification, we must be satisfied that this objection is groundless. Had we adverted to the true meaning, and not gone farther, we should not be here to-day, but should have come to a decision long ago. We are also told that religion is not secured; that religious tests are not required. You will find that the exclusion of tests will strongly tend to establish religious freedom. If tests were required, and if the Church of England, or any other, were established, I might be excluded from any office under the government, because my conscience might not permit me to take the test required. The diversity of opinions and variety of sects in the United States have justly been reckoned a great security with respect to religious liberty. The difficulty of establishing a uniformity of religion in this country is immense. The extent of the country is very great. The multiplicity of sects is very great

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likewise. The people are not to be disarmed of their weapons. They are left in full possession of them. The government is administered by the representatives of the people, voluntarily and freely chosen.

Under these circumstances, should any one attempt to establish their own system, in prejudice of the rest, they would be universally detested and opposed, and easily frustrated. This is a principle which secures religious liberty most firmly. The government will depend on the assistance of the people in the day of distress. This is the case in all governments. It never was otherwise. They object to this government because it is strong and energetic, and, with respect to the rich and poor, that it will be favorable to the one and oppressive to the other. It is right it should be energetic. This does not show that the poor shall be more oppressed than the rich. Let us examine it. If it admits that private and public justice should be done, it admits what is just. As to the indolent and fraudulent, nothing will reclaim these but the hand of force and compulsion. Is there any thing in this government which will show that it will bear hardly and unequally on the honest and industrious part of the community? I think not. As to the mode of taxation, the proportion of each state, being known, cannot be exceeded; and such proportion will be raised, in the most equitable manner, of the people, according to their ability. There is nothing to warrant a supposition that the poor will be equally taxed with the wealthy and opulent.

I shall make a comparison, to illustrate my observations, between the state and the general government. In our state government, so much admired by the worthy gentleman over the way, though there are 1700 militia in some counties, and but 150 in others, yet every county sends two members, to assist in legislating for the whole community. There is disproportion between the respectable county of Augusta, which I have the honor to represent, and the circumscribed, narrow county of Warwick. Will any gentleman tell us that this is a more equal representation than is fixed in the Constitution, whereby 30,000 are to send one representative, in whatever place they may reside? By the same state system, the poor, in many instances, pay as much as the rich. Many laws occur to my mind where I could show you that the representation and taxation bear hard on those who live

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in large, remote, back counties. The mode of taxation is more oppressive to us than to the rest of the community. Last fall, when the principle of taxation was debated, it was determined that tobacco should be received in discharge of taxes; but this did not relieve us, for it would not fetch what it cost us, as the distance is so great, and the carriage so difficult. Other specific articles were not received in payment of taxes; so that we had no other alternative than to pay specie, which was a peculiar hardship. I could point out many other disadvantages which we labor under; but I shall not now fatigue the house.

It is my lot to be among the poor people. The most that I can claim or flatter myself with, is to be of the middle rank. I wish no more, for I am contented. But I shall give my opinion unbiased and uninfluenced, without erudition or eloquence, but with firmness and candor; and in so doing I will satisfy my conscience. If this Constitution be bad, it will bear equally as hard on me as on any other member of the society. It will bear hard on my children, who are as dear to me as any man's children can be to him. Having their felicity and happiness at heart, the vote I shall give in its favor can only be imputed to a conviction of its utility and propriety. When I look for responsibility, I fully find it in that paper. When the members of the government depend on ourselves for their appointment, and will bear an equal share of the burdens imposed on the people, — when their duty is inseparably connected with their interests, — I conceive there can be no danger. Will they forfeit the friendship and confidence of their countrymen, and counteract their own interest? As they will probably have families, they cannot forget them. When one of them sees that Providence has given him a numerous family, he will be averse to lay taxes on his own posterity. They cannot escape them. They will be as liable to be taxed as any other persons in the community. Neither is he sure that he shall enjoy the place again, if he breaks his faith. When I take these things into consideration, I think there is sufficient responsibility.

As to the amendments now on your table, besides the impropriety of proposing them to be obtained previous to ratification, they appear to me to be evidently and clearly objectionable. Look at the bill of rights; it is totally mu-

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tilated and destroyed, in that paper. The 15th article of the bill of rights of Virginia is omitted entirely in this proposed bill of rights. That article says that "no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles." This article is the best of the whole. Take away this, and all is gone. Look at the first article of our bill of rights. It says that all men are by nature equally free and independent. Does that paper acknowledge this? No; it denies it.

They tell us that they see a progressive danger of bringing about emancipation. The principle has begun since the revolution. Let us do what we will, it will come round. Slavery has been the foundation of that impiety and dissipation which have been so much disseminated among our countrymen. If it were totally abolished, it would do much good.

Gentlemen say that we destroy our own principles by subsequent amendments. They say that it is acting inconsistently with our reasons. Let us examine this position. Here is a principle of united wisdom founded on mutual benefits; and, as experience may show defects, we stipulate that, when they shall happen, they shall be amended; that, when a majority finds defects, we will search a remedy and apply it. There are two ways of amending it pointed out in the system itself. When introduced, either way, it is to be binding.

I am happy to see that happy day approaching when we lose sight of dissensions and discord, which are the greatest sources of political misfortunes. Division is a dreadful thing. This Constitution may have defects. There can be no human institution without defects. We must go out of this world to find it otherwise. The annals of mankind do not show us one example of a perfect constitution.

When I see such a diversity of opinions among gentlemen on this occasion, it brings to my recollection a portion of history which strongly warns us to be moderate and cautious.

The historical facts to which I allude happened in a situation similar to our own. When the Parliament of England beheaded King Charles I., conquered their enemies, obtained liberty, and established a kind of republic, one would think

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that they would have had sufficient wisdom and policy to preserve that freedom and independence which they had with such difficulty acquired. What was the consequence? That they would not bend to the sanction of laws or legal authority. For the want of an efficient and judicious system of republican government, confusion and anarchy took place. Men became so lawless, so destitute of principle, and so utterly ungovernable, that, to avoid greater calamities, they were driven to the expedient of sending for the son of that monarch whom they had beheaded, that he might become their master. This is like our situation in some degree. It will completely resemble it, should we lose our liberty as they did. It warns and cautions us to shun their fate, by avoiding the causes which produced it. Shall we lose our blood and treasure, which we lost in the revolution, and permit anarchy and misery to complete the ruin of this country? Under these impressions, and for these reasons, I am for adopting the Constitution without previous amendments. I will go any length afterwards, to reconcile it to gentlemen, by proposing subsequent amendments. The great and wise state of Massachusetts has taken this step. The great and wise state of Virginia might safely do the same. I am contented to rest my happiness on that footing.

Mr. HENRY. Mr. Chairman, when we were told of the difficulty of obtaining previous amendments, I contended that they might be as easily obtained as subsequent amendments. We are told that nine states have adopted it. If so, when the government gets in motion, have they not a right to consider our amendments as well as if we adopted first? If we remonstrate, may they not consider and admit our amendments? But now, sir, when we have been favored with a view of their subsequent amendments, I am confirmed in what I apprehended; and that is, subsequent amendments will make our condition worse; for they are placed in such a point of view as will make this Convention ridiculous. I speak in plain, direct language. It is extorted from me. If this Convention will say, that the very right by which amendments are desired is not secured, then I say our rights are not secured. As we have the right of desiring amendments, why not exercise it? But gentlemen deny this right. It follows, of course, that, if this right be not secured, our other rights are not. The proposition of subsequent amendments

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is only to lull our apprehensions. We speak the language of contradiction and inconsistency, to say that rights are secured, and then say that they are not. Is not this placing this Convention in a contemptible light? Will not this produce contempt of us in Congress, and every other part of the world? Will gentlemen tell me that they are in earnest about these amendments?

I am convinced they mean nothing serious. What are the rights which they do not propose to secure — which they reject? — for I contend there are many essential and vital rights which are omitted. One is the power of direct taxation. Gentlemen will not even give this invaluable right a place among their subsequent amendments. And do gentlemen mean seriously that they will oppose us on this ground on the floor of Congress? If Virginia thinks it one of her dearest rights, she need not expect to have it amended. No, sir; it will be opposed. Taxes and excises are to be laid on us. The people are to be oppressed, and the state legislature prostrated. Very material amendments are omitted. With respect to your militia, we only request that, if Congress should refuse to find arms for them, this country may lay out their own money to purchase them. But what do the gentlemen on the other side say? As much as that they will oppose you in this point also; for, if my recollection has not failed me, they have discarded this also. And shall we be deprived of this privilege? We propose to have it, in case there shall be a necessity to claim it. And is this claim incompatible with the safety of this country — with the grandeur and strength of the United States? If gentlemen find peace and rest on their minds, when the relinquishment of our rights is declared to be necessary for the aggrandizement of the government, they are more contented than I am.

Another thing which they have not mentioned, is the power of *treaties*. Two thirds of the senators present can make treaties; and they are, when made, to be the supreme law of the land, and are to be paramount to the state constitutions. We wish to guard against the temporary suspension of our great national rights. We wish some qualification of this dangerous power. We wish to modify it One amendment which has been wished for, in this respect, is, that no treaty should be made without the

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consent of a considerable majority of both houses. I might go on and enumerate many other great rights entirely neglected by their subsequent amendments; but I shall pass over them in silence. I am astonished at what my worthy friend (Mr. Innes) said—that we have no right of proposing previous amendments. That honorable gentleman is endowed with great eloquence—eloquence splendid, magnificent, and sufficient to shake the human mind! He has brought the whole force of America against this state. He has also strongly represented our comparative weakness, with respect to the powers of Europe. But when I review the actual state of things, I see that dangers from thence are merely ideal. His reasoning has no effect on me. He cannot shake my political faith. He admits our power over subsequent amendments, though not over previous amendments. Where is the distinction between them? If we have a right to depart from the letter of our commission in one instance, we have in the other; for subsequent amendments have no higher authority than previous. We shall be absolutely certain of escaping danger in the one case, but not in the other. I think the apprehension expressed by another honorable gentleman has no good foundation. He apprehended civil discord if we did not adopt. I am willing to concede that he loves his country. I will, for the sake of argument, allow that I am one of the meanest of those who love their country. But what does this amount to? The great and direct end of government is liberty. Secure our liberty and privileges, and the end of government is answered. If this be not effectually done, government is an evil. What amendments does he propose which secure our liberty? I ask pardon if I make a mistake, but it seems to me that his proposed subsequent amendments do not secure one single right. They say that your rights are secured in the paper on the table, so that these subsequent amendments are a mere supererogation. They are not necessary, because the objects intended to be secured by them are secured already. What is to become of the trial by jury? Had its security been made a part of the Constitution, it would have been sufficiently guarded. But as it is, in that proposition it is by no means explicitly secured. Is it not trifling to admit the necessity of securing it, and not do it in a positive, unequivocal manner? I wish I could place it in any other view

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than a trifling one. It is only intended to attack every project of introducing amendments. If they are serious, why do they not join us, and ask, in a manly, firm, and reso lute manner, for these amendments? Their view is to defeat every attempt to amend. When they speak of their subsequent recommendations, they tell you that amendments must be got, and the next moment they say they are unnecessary!

I beg pardon of this house for having taken up more time than came to my share, and I thank them for the patience and polite attention with which I have been heard. If I shall be in the minority, I shall have those painful sensations which arise from a conviction of *being overpowered in a good cause*. Yet I will be a peaceable citizen. My head, my hand, and my heart, shall be at liberty to retrieve the loss of liberty, and remove the defects of that system in a constitutional way. I wish not to go to violence, but will wait with hopes that the spirit which predominated in the revolution is not yet gone, nor the cause of those who are attached to the revolution yet lost. I shall therefore patiently wait in expectation of seeing that government changed, so as to be compatible with the safety, liberty, and happiness, of the people.

Gov. RANDOLPH. Mr. Chairman, one parting word I humbly supplicate.

The suffrage which I shall give in favor of the Constitution will be ascribed, by malice, to motives unknown to my breast. But, although for every other act of my life I shall seek refuge in the mercy of God, for this I request his *justice* only. Lest, however, some future annalist should, in the spirit of party vengeance, deign to mention my name, let him recite these truths — *that I went to the federal Convention* with the strongest affection for the Union; that I acted there in full conformity with this affection; *that I refused to subscribe, because I had, as I still have, objections to the Constitution*, and wished a free inquiry into its merits; and that the accession of eight states reduced our *deliberations* to the single question of *Union or no Union*.

Mr. President now resumed the chair, and Mr. Matthews reported, that the committee had, according to order, again had the proposed Constitution under their consideration, and had gone through the same, and come

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to several resolutions thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same were again read, and are as followeth: —

"Whereas the powers granted under the proposed Constitution are the gift of the people, and every power not granted thereby remains with them, and at their will, — no right, therefore, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and, among other essential rights, liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.

"And whereas any imperfections, which may exist in the said Constitution, ought rather to be examined in the mode prescribed therein for obtaining amendments, than by a delay, with a hope of obtaining previous amendments, to bring the Union into danger, —

"*Resolved*, That it is the opinion of this committee, that the said Constitution be ratified. But in order to relieve the apprehensions of those who may be solicitous for amendments, —

"*Resolved*, That it is the opinion of this committee, that whatsoever amendments may be deemed necessary, be recommended to the consideration of the Congress which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the 5th article thereof."

The 1st resolution being read a second time, a motion was made, and the question being put, to amend the same by substituting, in lieu of the said resolution and its *preamble*, the following resolution, —

"*Resolved*, That, previous to the ratification of the new Constitution of government recommended by the late federal Convention, a declaration of rights, asserting, and securing from encroachment, the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most exceptionable parts of the said Constitution of government, ought to be referred by this Convention to the other states in the American confederacy for their consideration," —

It passed in the negative — ayes, 80; noes, 88.

On motion of Mr. Patrick Henry, seconded by Mr. Theodorick Bland, the ayes and noes, on the said question, were taken, as follows: —

AYES.

Edmund Custis,	Thomas Read,	Samuel Richardson,
John Pride,	Benjamin Harrison,	Joseph Haden,
Edmund Booker	John Tyler,	John Early,
William Cabell,	David Patteson,	Thomas Arthurs,
Samuel Jordan Cabell,	Stephen Pankey,	John Guerrant,
John Trigg,	Joseph Michaux,	William Sampson,
Charles Clay,	Thomas H. Drew,	Isaac Coles,
H. Lee, of Bourbon,	French Strother,	George Carrington,
John Jones,	Joel Early,	Parke Goodall,
Binns Jones,	Joseph Jones,	J. Carter Littlepage,
Charles Patteson,	William Watkins,	Thomas Cooper,
David Bell,	Meriwether Smith,	John Marr,
Robert Alexander,	James Upshaw,	Thomas Roane,
Edmund Winston,	John Fowler,	Holt Richeson,

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Benjamin Temple,	John Evans,	Cuthbert Bullitt,
S. Thompson Mason,	Walter Crocket,	Thomas Carter,
William White,	Abraham Trigg,	Henry Dickenson,
Jonathan Patteson,	Matthew Walton,	James Monroe,
Christopher Robertson.	John Steele,	John Dawson,
John Logan,	Robert Williams,	George Mason,
Henry Pawling,	J. Wilson, of Pittsylvania,	Andrew Buchanan,
John Miller,	Thomas Turpin,	John Powell Briggs
Green Clay,	Patrick Henry,	Thomas Edmunds,
Samuel Hopkins,	Robert Lawson,	Richard Carey,
Richard Kennon,	Edmund Ruffin,	Samuel Edminson,
Thomas Allen,	Theodorick Bland,	James Montgomery.
Alexander Robertson,	William Grayson,	

NOES.

E. Pendleton, *President*,	John Prunty,	Archibald Woods,
George Parker,	Isaac Vanmeter,	Ebenezer Zane,
George Nicholas,	Abel Seymour,	James Madison,
Wilson Nicholas,	Governor Randolph,	J. Gordon, of Orange,
Zachariah Johnson,	John Marshall,	William Ronald,
Archibald Stuart,	Nathaniel Burwell,	Anthony Walke,
William Dark,	Robert Andrews,	Thomas Walke,
Adam Stephen,	James Johnson,	Benjamin Wilson,
Martin M'Ferran,	Robert Breckenridge,	J. Wilson, of Randolph
William Fleming,	Rice Bullock,	Walker Tomlin,
James Taylor, of Caroline,	William Fleet,	William Peachy,
Paul Carrington,	Burdet Ashton,	William M'Kee,
Miles King,	William Thornton,	Andrew Moore,
Worlich Westwood,	J. Gordon, of Lancaster,	Thomas Lewis,
David Stuart,	Henry Towles,	Gabriel Jones,
Charles Simms,	Levin Powell,	Jacob Rinker,
Humphrey Marshall,	Wm. Overton Callis,	John Williams,
Martin Pickett,	Ralph Wormley, Jr.,	Benjamin Blunt,
Humphrey Brooke,	Francis Corbin,	Samuel Kello,
J. Sherman Woodcock,	William M'Clerry,	John Hartwell Cocke,
Alexander White,	Willis Riddick,	John Allen,
Warner Lewis,	Solomon Shepherd,	Cole Digges,
Thomas Smith,	William Clayton,	H. Lee, of Westmoreland
George Clendinen,	Burwell Bassett,	Bushrod Washington,
John Stewart,	James Webb,	John Blair,
William Mason,	James Taylor, of Norfolk,	George Wythe,
Daniel Fisher,	John Stringer,	James Innes,
Andrew Woodrow,	Littleton Eyre,	Thomas Matthews.
Ralph Humphreys,	Walter Jones,	
George Jackson,	Thomas Gaskins,	

And then, the *main question* being put that the Convention do *agree* with the committee in the said 1st resolution, it was resolved in the *affirmative* — ayes, 89; noes, 79.

On the motion of Mr. George Mason, seconded by Mr. Patrick Henry, the ayes and noes, on the said *main question*, were taken, as follows: —

AYES.

E. Pendleton, *President*,	Adam Stephen,	Worlich Westwood,
George Parker,	Martin M'Ferran,	David Stuart,
George Nicholas,	William Fleming,	Charles Simms,
Wilson Nicholas,	James Taylor, of Caroline,	Humphrey Marshall,
Zachariah Johnson,	Paul Carrington,	Martin Pickett,
Archibald Stuart,	David Patteson,	Humphrey Brooke,
William Dark,	Miles King,	John S. Woodcock,

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Alexander White,	J. Gordon, of Lancaster,	Thomas Walke,
Warner Lewis,	Henry Towles,	Benjamin Wilson,
Thomas Smith,	Levin Powell,	J. Wilson, of Randolph,
George Clendinen,	W. Overton Callis,	Walker Tomlin,
John Stewart,	Ralph Wormley, Jun.,	William Peachy,
William Mason,	Francis Corbin,	William M'Kee,
Daniel Fisher,	William M'Clerry,	Andrew Moore,
Andrew Woodrow,	Willis Riddick,	Thomas Lewis,
Ralph Humphreys,	Solomon Shepherd,	Gabriel Jones,
George Jackson,	William Clayton,	Jacob Rinker,
John Prunty,	Burwell Bassett,	John Williams,
Isaac Vanmeter,	James Webb,	Benjamin Blunt,
Abel Seymour,	J. Taylor, of Norfolk,	Samuel Kello,
Governor Randolph,	John Stringer,	John Hartwell Cocke,
John Marshall,	Littleton Eyre,	John Allen,
Nathaniel Barwell,	Walter Jones,	Cole Digges,
Robert Andrews,	Thomas Gaskins,	H. Lee, of Westmoreland,
James Johnson,	Archibald Woods,	Bushrod Washington,
Robert Breckenridge,	Ebenezer Zane,	John Blair,
Rice Bullock,	James Madison,	George Wythe,
William Fleet,	James Gordon, of Orange,	James Innes,
Burdet Ashton,	William Ronald,	Thomas Matthews.
William Thornton,	Anthony Walke,	

NOES.

Edmund Custis,	Samuel Richardson,	Alexander Robertson,
John Pride,	Joseph Haden,	John Evans,
Edmund Brooker,	John Early,	Walter Crocket,
William Cabell,	Thomas Arthurs,	Abraham Trigg,
Samuel Jordan Cabell,	John Guerrant,	Matthew Walton,
John Trigg,	William Sampson,	John Steele,
Charles Clay,	Isaac Coles,	Robert Williams,
Henry Lee, of Bourbon,	George Carrington,	J. Wilson, of Pittsylvania,
John Jones,	Parker Goodall,	Thomas Turpin,
Binns Jones,	John Carter Littlepage,	Patrick Henry,
Charles Patteson,	Thomas Cooper,	Robert Lawson,
David Bell,	John Marr,	Edmund Ruffin,
Robert Alexander,	Thomas Roane,	Theodorick Bland,
Edmund Winston,	Holt Richeson,	William Grayson,
Thomas Read,	Benjamin Temple,	Cuthbert Bullitt,
John Tyler,	Stephens T. Mason,	Thomas Carter,
Stephen Pankey,	William White,	Henry Dickenson,
Joshua Michaux,	Jonathan Patteson,	James Monroe,
Thomas H. Drew,	Christopher Robertson,	John Dawson,
French Strother,	John Logan,	George Mason,
Joel Early,	Henry Pawling,	Andrew Buchanan,
Joseph Jones,	John Miller,	John Howell Briggs,
William Walkins,	Green Clay,	Thomas Edmunds,
Meriwether Smith,	Samuel Hopkins,	Richard Cary,
James Upshaw,	Richard Kennon,	Samuel Edminson,
John Fowler,	Thomas Allen,	James Montgomery

The 2d resolution being then read a second time, a motion was made, and, the question being put to amend the same by striking out the preamble thereto, it was resolved in the affirmative.

And then, the main question being put, that the Convention do agree with the committee in the 2d resolution so amended, it was resolved in the affirmative.

On motion, *Ordered*, That a committee be appointed to prepare and

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report a form of ratification pursuant to the first resolution; and that Governor Randolph, Mr. Nicholas, Mr. Madison, Mr. Marshall, and Mr. Corbin, compose the said committee.

On motion, *Ordered*, That a committee be appointed to prepare and report such amendments as by them shall be deemed necessary, to be recommended, pursuant to the second resolution; and that the Hon. George Wythe, Mr. Harrison, Mr. Matthews, Mr. Henry, Governor Randolph, Mr. George Mason, Mr. Nicholas, Mr. Grayson, Mr. Madison, Mr. Tyler, Mr. John Marshall, Mr. Monroe, Mr. Ronald, Mr. Bland, Mr. Meriwether Smith, Mr. Paul Carrington, Mr. Innes, Mr. Hopkins, Mr. John Blair, and Mr. Simms, compose the said committee.

His excellency, Governor RANDOLPH, reported, from the committee appointed, according to order, *a form of ratification*, which was read and agreed to by the Convention, in the words following: VIRGINIA, TO WIT:

"We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention, having fully and freely investigated and discussed the proceedings of the federal Convention, and being prepared, as well as the most mature deliberation hath enabled us, to decide thereon, Do, in the name and in behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, be resumed by them whensoever the same shall be perverted to their injury or oppression, and that every power, *not granted thereby, remains with them, and at their will;* that, therefore, no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.

"With these impressions, with a solemn appeal to the Searcher of hearts for the purity of our intentions, and under the conviction that whatsoever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein, than to bring the Union into danger by delay, with a hope of obtaining amendments previous to the ratification, —

"We, the said delegates, in the name and behalf of the people of Virginia, do, by these presents, *assent to* and *ratify the Constitution*, recommended on the seventeenth day of September, one thousand seven hundred and eighty-seven, by the federal Convention, for the government of the United States; hereby announcing to all those whom it may concern, that the said Constitution is binding upon the said people, according to an authentic copy hereto annexed, in the words following."

[For the Constitution, see the commencement of Vol. I.]

THURSDAY, *June* 26, 1788.

An *engrossed form of the ratification* agreed to yesterday, containing the proposed Constitution of government, as recommended by the federal Convention on the seventeenth day of September, one thousand seven

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hundred and eighty-seven, being prepared by the secretary, was read and signed by the president, in behalf of the Convention.

On motion, *Ordered*, That the said ratification be transmitted by the president, in the name of this Convention, to the United States in Congress assembled.

On motion, *Ordered*, That there be allowed to the president of this Convention, for his services, the sum of forty shillings per day, including his daily pay as a member; to the secretary, the sum of forty pounds; to the chaplain, the sum of thirty-two pounds; to the serjeant, the sum of twenty-four pounds; to the clerk of the committee of privileges, the sum of twenty pounds; and to each of the door-keepers, the sum of fifteen pounds, for their respective services.

FRIDAY, *June* 27, 1788.

Another engrossed form of the ratification, agreed to on Wednesday last, containing the proposed Constitution of government, as recommended by the federal Convention on the seventeenth day of September, one thousand seven hundred and eighty-seven, being prepared by the secretary, was read and signed by the president, in behalf of the Convention.

On motion, *Ordered*, That the said ratification be deposited by the secretary of this Convention in the archives of the General Assembly of this state.

Mr. WYTHE reported, from the committee appointed, such *amendments* to the proposed Constitution of government for the United States as were by them deemed necessary to be recommended to the consideration of the Congress which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the 5th article thereof; and he read the same in his place, and afterwards delivered them in at the clerk's table, where the same were again read, and are as follows: —

"That there be a declaration or bill of rights asserting, and securing from encroachment, the essential and unalienable rights of the people, in some such manner as the following: —

"1st. That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

"2d. That all power is naturally invested in, and consequently derived from, the people; that magistrates therefore are their *trustees* and *agents*, at all times amenable to them.

"3d. That government ought to be instituted for the common benefit, protection, and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive to the good and happiness of mankind.

"4th. That no man or set of men are entitled to separate or exclusive public emoluments or privileges from the community, but in consideration of public services, which not being descendible, neither ought the offices of magistrate, legislator, or judge, or any other public office, to be hereditary.

"5th. That the legislative, executive, and judicial powers of govern-

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ment should be separate and distinct; and, that the members of the two first may be restrained from oppression by feeling and participating the public burdens, they should, at fixed periods, be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections, in which all or any part of the former members to be eligible or ineligible, as the rules of the Constitution of government, and the laws, shall direct.

"6th. That the elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to, the community, ought to have the right of suffrage; and no aid, charge, tax, or fee, can be set, rated, or levied, upon the people without their own consent, or that of their representatives, so elected; nor can they be bound by any law to which they have not, in like manner, assented, for the public good.

"7th. That all power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people in the legislature, is injurious to their rights, and ought not to be exercised.

"8th. That, in all criminal and capital prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence, and be allowed counsel in his favor, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces;) nor can he be compelled to give evidence against himself.

"9th. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, privileges, or franchises, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the law of the land.

"10th. That every freeman restrained of his liberty is entitled to a remedy, to inquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

"11th. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and to remain sacred and inviolable.

"12th. That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property, or character. He ought to obtain right and justice freely, without sale, completely and without denial, promptly and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust.

"13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

"14th. That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, and property; all warrants, therefore, to search suspected places, or seize any freeman, his papers, or property, without information on oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous, and ought not to be granted.

"15th. That the people have a right peaceably to assemble together to

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consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.

"16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

"17th. That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.

"18th. That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the law directs.

"19th. That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead.

"20th. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established, by law, in preference to others."

AMENDMENTS TO THE CONSTITUTION.

"1st. That each state in the Union shall respectively retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the federal government.

"2d. That there shall be one representative for every thirty thousand, according to the enumeration or census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which, that number shall be continued or increased, as Congress shall direct, upon the principles fixed in the Constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as population increases.

"3d. When the Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state, of the quota of such state, according to the census herein directed, which is proposed to be thereby raised; and if the legislature of any state shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state.

"4th. That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding, any civil office under the authority of the United States, during the time for which they shall respectively be elected.

"5th. That the journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year, except such

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parts thereof, relating to treaties, alliances, or military operations, as, in their judgment, require secrecy.

"6th. That a regular statement and account of the receipts and expenditures of public money shall be published at least once a year.

"7th. That no commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively.

"8th. That no navigation law, or law regulating commerce, shall be passed without the consent of two thirds of the members present, in both houses.

"9th. That no standing army, or regular troops, shall be raised, or kept up, in time of peace, without the consent of two thirds of the members present, in both houses.

"10th. That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

"11th. That each state respectively shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service, in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments, as shall be directed or inflicted by the laws of its own state.

"12th. That the exclusive power of legislation given to Congress over the federal town and its adjacent district, and other places, purchased or to be purchased by Congress of any of the states, shall extend only to such regulations as respect the police and good government thereof.

"13th. That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years.

"14th. That the judicial power of the United States shall be vested in one Supreme Court, and in such courts of admiralty as Congress may from time to time ordain and establish in any of the different states. The judicial power shall extend to all cases in law and equity arising under treaties made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other foreign ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under the grants of different states. In all cases affecting ambassadors, other foreign ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction; in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, as to matters of law only, except in cases of equity, and of admiralty, and maritime jurisdiction, in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make: but the judicial power of

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the United States shall extend to no case where the cause of action shall have originated before the ratification of the Constitution, except in disputes between states about their territory, disputes between persons claiming lands under the grants of different states, and suits for debts due to the United States.

"15th. That, in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.

"16th. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same.

"17th. That those clauses which declare that Congress shall not exercise certain powers, be not interpreted, in any manner whatsoever, to extend the powers of Congress; but that they be construed either as making exceptions to the specified powers where this shall be the case, or otherwise, as inserted merely for greater caution.

"18th. That the laws ascertaining the compensation of senators and representatives for their services, be postponed, in their operation, until after the election of representatives immediately succeeding the passing thereof; that excepted which shall first be passed on the subject.

"19th. That some tribunal other than the Senate be provided for trying impeachments of senators.

"20th. That the salary of a judge shall not be increased or diminished during his continuance in office, otherwise than by general regulations of salary, which may take place on a revision of the subject at stated periods of not less than seven years, to commence from the time such salaries shall be first ascertained by Congress."

And the Convention do, in the name and behalf of the people of this commonwealth, enjoin it upon their representatives in Congress to exert all their influence, and use all reasonable and legal methods, to obtain a ratification of the foregoing alterations and provisions, in the manner provided by the 5th article of the said Constitution; and, in all congressional laws to be passed in the mean time, to conform to the spirit of these amendments, as far as the said Constitution will admit.

And so much of the said amendments as is contained in the first twenty articles, constituting the bill of rights, being read again, *Resolved*, That this Convention doth concur therein.

The other amendments to the said proposed Constitution, contained in twenty-one articles, being then again read, a motion was made, and the question being put, — to amend the same by striking out the third article, containing these words, —

"When Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state of the quota of such state, according to the census herein directed, which is proposed to be thereby raised; and if the legislature of any state shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state," —

It passed in the negative — ayes, 65; noes, 85.

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On motion of Mr. George Nicholas, seconded by Mr. Benjamin Harrison, the ayes and noes on the said question were taken, as followeth: —

AYES.

George Parker,	Archibald Woods,	Levin Powell,
George Nicholas,	James Madison,	Wm. Overton Callis,
Wilson Nicholas,	J. Gordon, of Orange,	Ralph Wormley, Jun.,
Zachariah Johnson,	William Ronald,	Francis Corbin,
Archibald Stuart,	Thomas Walke,	William M'Clerry,
William Dark,	Anthony Walke,	James Webb,
Adam Stephen,	Benjamin Wilson,	James Taylor, of Norfolk,
Martin M'Ferran,	John Wilson,	John Stringer,
J. Taylor, of Caroline,	William Peachy,	Littleton Eyre,
David Stuart,	Andrew Moore,	Walter Jones,
Charles Simms,	Thomas Lewis,	Thomas Gaskins,
John Prunty,	Humphrey Marshall,	Gabriel Jones,
Abel Seymour,	Martin Pickett,	Jacob Rinker,
Governor Randolph,	Humphrey Brooke,	John Williams,
John Marshall,	John S. Woodcock,	Benjamin Blunt,
Nathaniel Burwell,	Alexander White,	Samuel Kello,
Robert Andrews,	Warner Lewis,	John Allen,
James Johnson,	Thomas Smith,	Cole Digges,
Rice Bullock,	John Stewart,	Bushrod Washington,
Burdet Ashton,	Daniel Fisher,	George Wythe,
William Thornton,	Alexander Woodrow,	Thomas Matthews.
Henry Towles,	George Jackson,	

NOES.

E. Pendleton, *President*,	Edmund Custis,	John Guerrant,
William Clayton,	John Pride,	William Sampson,
Burwell Bassett,	William Cabell,	Isaac Coles,
Matthew Walton,	Samuel Jordan Cabell,	George Carrington,
John Steele,	John Trigg,	Parke Goodall,
Robert Williams,	Charles Clay,	John Carter Littlepage,
John Wilson,	William Fleming,	Thomas Cooper,
Thomas Turpin,	Henry Lee, of Bourbon,	William Fleete,
Patrick Henry,	John Jones,	Thomas Roane,
Edmund Ruffin,	Binns Jones,	Holt Richeson,
Theodorick Bland,	Charles Patteson,	Benjamin Temple,
William Grayson,	David Bell,	J. Gordon, of Lancaster,
Cuthbert Bullitt,	Robert Alexander,	Stephens T. Mason,
Walter Tomlin,	Edmund Winston,	William White,
William M'Kee,	Thomas Read,	Jonathan Patteson,
Thomas Carter,	Paul Carrington,	John Logan,
Henry Dickenson,	Benjamin Harrison,	Henry Pawling,
James Monroe,	John Tyler,	John Miller,
John Dawson,	David Patteson,	Green Clay,
George Mason,	Stephen Pankey, Jun.,	Samuel Hopkins,
Andrew Buchanan,	Joseph Michaux,	Richard Kennon,
John Hartwell Cocke,	French Strother,	Thomas Allen,
John Howell Briggs,	Joseph Jones,	Alexander Robertson,
Thomas Edmonds,	Miles King,	Walter Crocket,
Richard Carey,	Joseph Haden,	Abraham Trigg,
Samuel Edminson,	John Early,	Solomon Shepherd.
James Montgomery,	Thomas Arthurs,	

And then, the main question being put, that this Convention doth concur with the committee in the said amendments, —

It was resolved in the affirmative.

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On motion, *Ordered*, That the foregoing amendments be fairly engrossed upon parchment, signed by the president of this Convention, and by him transmitted, together with the ratification of the federal Constitution, to the United States in Congress assembled.

On motion, *Ordered*, That a fair, engrossed copy of the ratification of the federal Constitution, with the subsequent amendments this day agreed to, signed by the president, and attested by the secretary of this Convention, be transmitted by the president, in the name of the Convention, to the executive or legislature of each state in the Union.

Ordered, That the secretary do cause the journal of the proceedings of this Convention to be fairly entered into a well-bound book, and, after being signed by the president, and attested by the secretary, that he deposit the same in the archives of the privy council, or council of state.

On motion, *Ordered*, That the printer to this Convention do strike, forthwith, fifty copies of the ratification and subsequent amendments of the federal Constitution, for the use of each county in the commonwealth.

On motion, *Ordered*, That the public auditor be requested to adjust the accounts of the printer to the Convention for his services, and of the workmen who made some temporary repairs and alterations in the new academy, for the accommodation of the Convention, and to grant his warrant on the treasurer for the sum due the respective claimants.

On motion, *Resolved, unanimously*, That *the thanks* of the Convention be presented to *the president*, for his able, upright, and impartial discharge of the duties of that office.

Whereupon *the president* made his acknowledgment to the Convention, for so distinguished a mark of its approbation.

And then the Convention adjourned, "*sine die.*"

Signed, EDMUND PENDLETON, *President.*

Attest, JOHN BECKLEY, *Secretary.*

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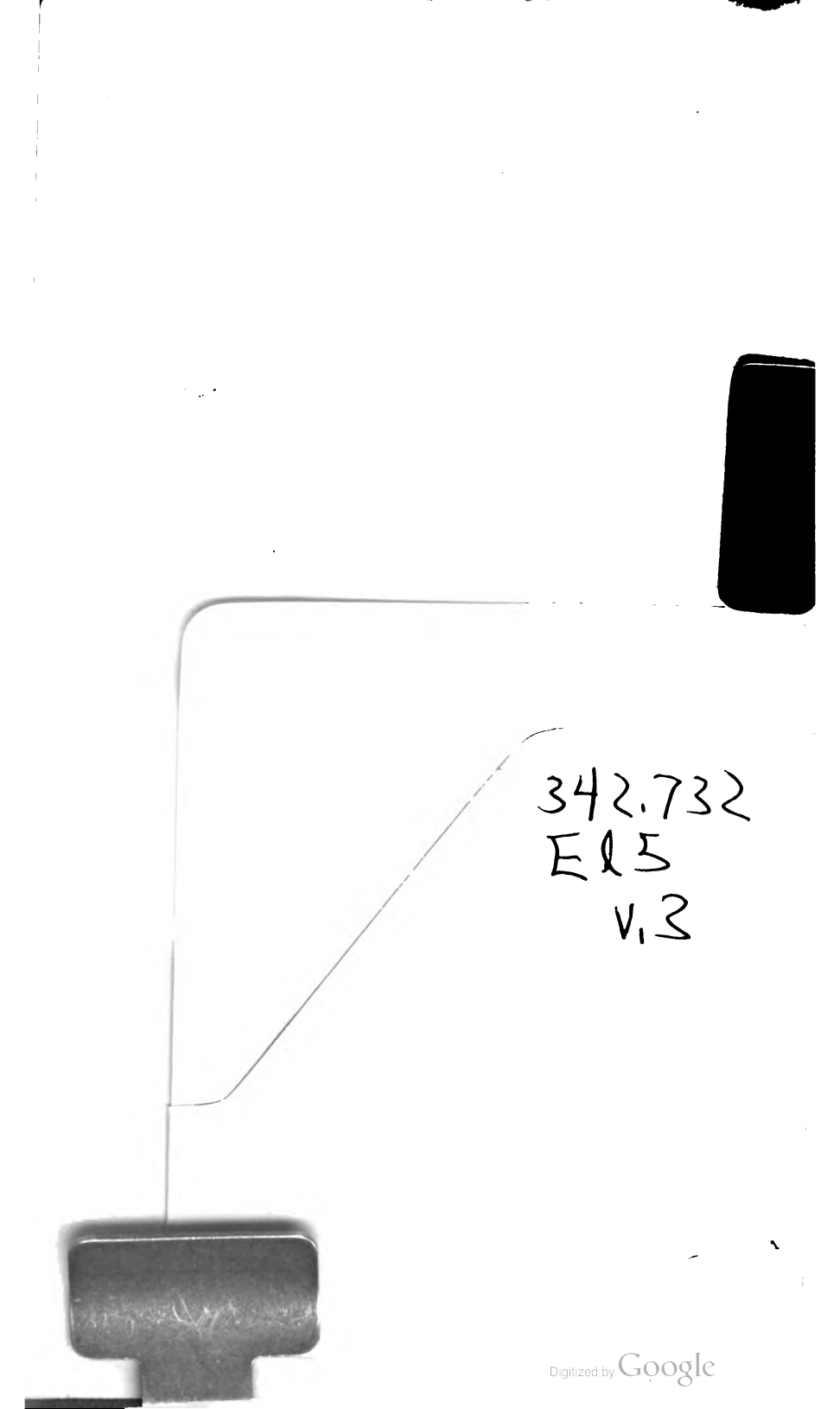
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Elliot, Jonathan, 1784-1846.
The debates in the several state convent
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