

James Madison to W. A. Duer, June 5, 1835.
Transcription: The Writings of James Madison,
ed. Gaillard Hunt. New York: G.P. Putnam's Sons,
1900-1910.

TO W. A. DUER.¹

1 From the *Works of Madison* (Cong. Ed.).

Montpellier, June 5th, 1835.

Dear Sir —I have received your letter of April 25th, and with the aid of a friend and amanuensis, have made out the following answer:

On the subject of Mr. Pinckney's proposed plan of a Constitution, it is to be observed that the plan printed in the Journal was not the document actually presented by him to the Convention. That document was no otherwise noticed in the proceedings of the Convention than by a reference of it, with Mr. Randolph's plan, to a committee of the whole, and afterwards to a committee of detail, with others; and not being found among the papers left with President Washington, and finally deposited in the Department of State, Mr. Adams, charged with the publication of them, obtained from Mr. Pinckney the document in the printed Journals as a copy supplying the place of the missing one. In this there must be error, there being sufficient evidence, even on the face of the Journals, that the copy sent to Mr. Adams could not be the same with the document laid before the Convention. Take, for example, the article constituting the House of Representatives the corner-stone of the fabric, the identity, even verbal, of which, with the adopted Constitution, has attracted so much notice. In the first place, the details and phraseology

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of the Constitution appear to have been anticipated. In the next place, it appears that within a few days after Mr. Pinckney presented his plan to the Convention, he moved to strike out from the resolution of Mr. Randolph the provision for the election of the House of Representatives by the people, and to refer the choice of that House to the Legislatures of the States, and to this preference it appears he adhered in the subsequent proceedings of the Convention. Other discrepancies will be found in a source also within your reach, in a pamphlet published by Mr. Pinckney soon after the close of the Convention, in which he refers to parts of his plan which are at variance with the document in the printed Journal. A friend who had examined and compared the two documents has pointed out the discrepancies noted below.¹

¹ Discrepancies noted between the plan of Mr. C. Pinckney as furnished by him to Mr. Adams, and the plan presented to the Convention as described in his pamphlet.

The pamphlet refers to the following provisions which are not found in the plan furnished to Mr. Adams as forming a part of the plan presented to the Convention: 1. The Executive term of service 7 years. 2. A council of revision. 3. A power to convene and prorogue the Legislature. 4. For the junction or division of States. 5. For enforcing the attendance of members of the Legislature. 6. For securing exclusive right of authors and discoverers.

The plan, according to the pamphlet, provided for the appointment of all officers, except judges and ministers, by the Executive, omitting the consent of the Senate required in the plan sent to Mr. Adams. Article numbered 9, according to the pamphlet, refers the decision of disputes between the States to the mode prescribed under the Confederation. Article numbered 7, in the plan sent to Mr. Adams, gives to the Senate the regulating of the mode. There is no numerical correspondence between the articles as placed in the plan sent to Mr. Adams, and as noted in the pamphlet, and the latter refers numerically to more than are contained in the former.

It is remarkable, that although the plan furnished to Mr. Adams enumerates, with such close resemblance to the language of the Constitution as adopted, the following provisions,

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and among them the fundamental article relating to the constitution of the House of Representatives, they are unnoticed in his observations on the plan of Government submitted by him to the Convention, while minor provisions, as that enforcing the attendance of members of the Legislature, are commented on. I cite the following, though others might be added: [1] To subdue a rebellion in any State on application of its Legislature. [2] To provide such dock-yards and arsenals, and erect such fortifications, as may be necessary for the U. States, and to exercise exclusive jurisdiction therein. [3] To establish post and military roads. [4] To declare the punishment of treason, which shall consist only in levying war against the United States, or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses. [5] No tax shall be laid on articles exported from the States.

1. Election by the people of the House of Representatives. (Not improbably unnoticed, because the plan presented by him to the Convention contained his favourite mode of electing the House of Representatives by the State Legislatures, so essentially different from that of an election by the people, as in the Constitution recommended for adoption).
— *Madison's Note.*

2. The Executive veto on the laws. See the succeeding numbers as above.

Further evidence¹ on this subject, not within your own reach, must await a future, perhaps a posthumous disclosure.

¹ Alluding particularly to the debates in the Convention and the letter of Mr. Pinckney of March 28th, 1789, to Mr. Madison. [This note not included in the letter sent to Mr. Duer.]
— *Madison's Note.*

One conjecture explaining the phenomenon has been, that Mr. Pinckney interwove

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with the draught sent to Mr. Adams passages as agreed to in the Convention in the progress of the work, and which, after a lapse of more than thirty years, were not separated by his recollection.

The resolutions of Mr. Randolph, the basis on which the deliberations of the Convention proceeded, were the result of a consultation among the Virginia Deputies, who thought it possible that, as Virginia had taken so leading a part¹ in reference to the Federal Convention, some initiative propositions might be expected from them. They were understood not to commit any of the members absolutely or definitively on the tenor of them. The resolutions will be seen to present the characteristic provisions and features of a Government as complete (in some respects, perhaps, more so) as the plan of Mr. Pinckney, though without being thrown into a formal shape. The moment, indeed, a real Constitution was looked for as a substitute for the Confederacy, the distribution of the Government into the usual departments became a matter of course with all who speculated on the prospective change, and the form of general resolutions was adopted as the most convenient for discussion. It may be observed, that in reference to the powers to be given to the General Government the resolutions comprehended as well the powers contained in the articles of Confederation, without enumerating them, as others not overlooked in the resolutions, but left to be developed and defined by the Convention.

¹ Virginia proposed, in 1786, the Convention at Annapolis, which recommended the Convention at Philadelphia, of 1787, and was the first of the States that acted on, and complied with, the recommendation from Annapolis. [This note not included in the letter sent to Mr. Duer.]—*Madison's Note*.

With regard to the plan proposed by Mr. Hamilton, I may say to you, that a Constitution such as you describe was never proposed in the Convention, but was communicated to me by him at the close of it. It corresponds with the outline published in the Journal. The

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original draught being in possession of his family and their property, I have considered any publicity of it as lying with them.

Mr. Yates's notes, as you observe, are very inaccurate; they are, also, in some respects, grossly erroneous. The desultory manner in which he took them, catching sometimes but half the language, may, in part, account for it. Though said to be a respectable and honorable man, he brought with him to the Convention the strongest prejudices against the existence and object of the body, in which he was strengthened by the course taken in its deliberations. He left the Convention, also, long before the opinions and views of many members were finally developed into their practical application. The passion and prejudice of Mr. L. Martin betrayed in his published letter could not fail to discolour his representations. He also left the convention before the completion of their work. I have heard, but will not vouch for the fact, that he became sensible of, and admitted his error. Certain it is, that he joined the party who favored the Constitution

in its most liberal construction.

I can add little to what I have already said in relation to the agency of your father in the adoption of the Federal Constitution. My only correspondence with him was a short one, introduced by a letter from him written during the Convention of New York, at the request of Mr. Hamilton, who was too busy to write himself, giving and requesting information as to the progress of the Constitution in New York and Virginia. Of my letter or letters to him I retain no copy. The two letters from him being short, copies of them will be sent if not on his files, and it desired. They furnish an additional proof that he was an ardent friend of the depending Constitution.

I have marked this letter "confidential," and wish it to be considered for yourself only. In my present condition, enfeebled by age and crippled by disease, I may well be excused for wishing not to be in any way brought to public view on subjects involving considerations of

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a delicate nature. I thank you, sir, for your kind sentiments and good wishes, and pray you to accept a sincere return of them.¹

1 The following analysis of the Pinckney plan was made by Madison:

[1835]

In the plan of Mr Pinkney as presented to Mr Adams and published in Journal

Plan as commented on in Pamphlet

Article 1. Style—

Not adverted to

2. Division of Legislative power in two Houses.

recommended as essential page 8.

3. Members of H. of D. to be chosen by the people &ce.

Silent.

4. Senate to be elected by the H. of Del. &c.

recommended page 9, but the 4th. article relates to extending rights of Citizens of each State throughout U. S., the delivery of fugitives from justice on demand, & the giving faith & credit to records & proceedings of each—vide Art. 12 & 13.

5. relates to the mode of electing the H. of Del. by the people & rules &ce. Every bill to be presented to the *President* for his revision.

This article declares that individual States shall not exercise certain powers, founded on the principles of the 6th. of the Confederation. A *Council* of revision is stated to be

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incorporated in his plan page 9. Vide Art. II, for prohibition—empowers Congress to raise troops, & to levy taxes according to numbers of whites and # of other descriptions.

6. powers of the Legislature enumerated & all constitutional acts thereof and treaties declared to be the supreme law & the judges bound thereby.

This article is stated to be an important alteration in the fed. system giving to Congress, not only a revision but a negative on the State laws. The States to retain only local legislation limited to concerns affecting each only, vide Art. 11th

Article 6th. “all laws regulating commerce shall require the assent of two thirds of the members present in each House.”

“In all those important questions where the present Confederation has made the assent of nine States necessary, I have made the assent of #ds. of both Houses, when assembled in Congress, and added to the number the regulation of trade and acts for laying an Impost and raising a revenue.”

The 14th. article gives the Legislature power to admit new States into the Union on the same terms with the original States by # of both Houses, nothing further

“I have also added an article authorizing the United States, upon petition from the majority of the citizens of any State, or Convention authorized for that purpose, and of the Legislature of the State to which they wish to be annexed, or of the States among which they are willing to be divided, to consent to such junction or division, on the terms mentioned in the article.”

no such provision.

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page 25. “a provision respecting the attendance of the members of both Houses; the penalties under which their attendance is required, are such as to insure it, as we are to suppose no man would willingly expose himself to the ignominy of a disqualification.”

“All criminal offences (except in cases of impeachment) shall be tried in the State where they shall be committed. The trials shall be open & public, & be by Jury.”

Trial by Jury is provided for “in all cases, criminal as well as *Civil*.”

Article 9. gives the legislative power to establish Courts of law, equity & admiralty & relates to the appointment & compensation of judges—one to be the Supreme Court—its jurisdiction over all cases under the laws of U. S. or affecting ambassadors &c. to the trial of impeachment of officers of U. S.; cases of admiralty & maritime jurisdiction—cases where original and where appellate.

The 9th article respecting the appointment of Federal Courts, for deciding controversies between different States, is the same with the Confederation; but this may with propriety be left to the Supreme Judicial & *article 7th of the plan gives this power to the Senate* of regulating the manner of decision).

Article 10. after first Census the H. of D. shall apportion the Senate by electing one Senator for every— members each State shall have in H. of D.—each State to have at least one member.

The 10th article gives Congress a right to institute such offices as are necessary; of erecting a Federal Judicial Court; and of appointing Courts of Admiralty.

page 19. The exclusive right of coining money &c. is essential to assuring the federal funds—&c.

See article 6th.

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page 20. In all important questions where the Confederation made the assent of 9 States necessary I have made # of both houses—and have added to them the regulation of trade and acts for levying Impost & raising revenue.

page 20. The exclusive right of making regulations for the government of the Militia ought to be vested in the Federal Councils &c.

page 22. The article empowering the U. S. to admit new States indispensable. Vide Article 14.

To establish uniform rules of naturalization in Article 6.

page 23. The Fed. Govt. should possess the exclusive right of declaring on what terms the privileges of citizenship & naturalization should be extended to foreigners.

Article 16 provides the same by #.

page 23. Article 16 provides that alterations may be made by a given number of the legislature.

Nothing of it —

page 25. There is also in the articles, a provision respecting the attendance of members of both Houses—the penalties under which their attendance is required are such as to insure it &c.

It is provided in article 9 that all criminal offenses (except in cases of impeachment) shall be tried in the State where committed. The trials shall be open & public, and be by Jury. Nothing as to the rest—

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page 26. The next article provides for the privilege of the writ of Habeas Corpus—the trial by jury in all cases—criminal as well as civil—the freedom of the press, and the prevention of religious tests as qualifications for offices of trust &c.

article 6 provides for a seat of Govt. & a National University thereat—but no protection for authors is provided.

page 26. There is also an authority to the National Legislature, permanently to fix the seat of the Genl. Govt., to secure to authors the exclusive right to their performances & discoveries, & to establish a federal university.

Not in the plan.

There are other articles of subordinate consideration.

In the plan of Mr. Pinkney as presented to Mr. Adams & published in the Journal of the Convention.

The plan according to his comments in the pamphlet printed by Francis Childs in New York.

The House of Representatives to be chosen

No provision for electing the House of Representatives.

No Council of Revision.

A Council of Revision consisting of the Executive and principal officers of government. “This, I consider as an improvement in legislation, and have therefore incorporated it as a part of the system.”

The President to be elected for years—

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The Executive to be appointed septennially

not in the plan.

“—have a right to convene and prorogue the legislature upon special occasions, when they cannot agree as to the time of their adjournment, and appoint all officers except Judges and Foreign Ministers.”

“and, except as to Ambassadors, other Ministers, and Judges of the Supreme Court, he shall nominate, and with *the consent of the Senate*, appoint all other Officers of the U. S.”

The 7th article gives the Senate the exclusive power to regulate the manner of deciding all disputes and controversies now subsisting, or which may arise, between the States, respecting jurisdiction or territory.

“The 9th article respecting the appointment of Federal Courts for deciding territorial controversies between different States, is the same with that in the Confederation; but this may with propriety be left to the Supreme Judicial.”

Article 7. Senate alone to declare War, make treaties & appoint ministers & Judges of Sup. Court. To regulate the manner of deciding disputes, now subsisting, or which may arise between States respecting jurisdiction or territory.

The 7th. article invests the U. S. with the compleat power of regulating trade & levying imposts & duties. (The regulation of commerce is given in the powers enumerated article 6th. of plan.)

Article 8. The Executive power—H[is] E[xcellency] President U. S. for years & re-eligible. To give information to the Legislatures of the State of the Union & recommend measures to their consideration. To take care that the laws be executed. To commission all officers of the U. S. and except ministers & Judges of Sup. Court, nominate & *with consent of*

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Senate appoint all other officers—to receive ministers & may correspond with Ex. of different States. To grant pardon except in impeachments. To be commander in chief—to receive a fixed compensation—to take an oath—removable on impeachment by H. of D. and conviction in Supreme Court of bribery & corruption. The President of Senate to act as Pres. in case of death &ce and the Speaker of the H. of D. in case of death of Pres. of Senate.

Article 8 like same in Confed. & gives power to exact postage for expense of office & for revenue.

Page 9. The executive should be appointed septennially, but his eligibility should not be limited. Not a branch of the Legislature further than as part of the Council of revision. His duties to attend to the execution of the Acts of Congress, by the several States; to correspond with them on the subject; to prepare and digest, in concert with the great Departments business that will come before the Legislature. To acquire a perfect knowledge of the situation of the Union, and to be charged with the business of the Home Deptm. To inspect the Departments. To consider their Heads as a Cabinet Council & to require their advice. To be Commander in Chief—to convene the legislature on special occasions & to appoint all officers but Judges & Foreign ministers— removable by impeachment— Salary to be fixed permanently by the Legislature.

Silent.

“to secure to authors the exclusive right to their performances and discoveries.”

Powers of the Senate enumerated Article 7, viz. “to declare war, make treaties & appoint ambassadors and Judges of the Supreme Court.”

Silent.

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“Every bill, which shall have passed the Legislature, shall be presented to the President for his revision; if he approves it he shall sign it; but if he does not approve it, he shall return it with his objections &ce &ce.

The executive “is not a branch of the Legislature, farther than as a part of the Council of revision.”

The Legislature shall have power

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

To provide such dockyards & arsenals, and erect such fortifications as may be necessary for the U. S. and to exercise exclusive jurisdiction therein;

To establish post & military roads;

To declare the law & punishment of counterfeiting coin;

To declare the punishment of treason, which shall consist only in levying war against the U. S., or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses.

The prohibition of any tax on exports—

These and other important powers are unnoticed in his remarks.

There is no numerical correspondence between the articles contained in the plan & those treated of in the pamphlet & the latter alludes to several more than are included in the former.

In Mr. Pinkney's letter to Mr. Adams, accompanying his plan he states that “very soon after the Convention met, I changed and avowed candidly the change of my opinion on giving

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the power to Congress to revise the State laws in certain cases, and in giving the exclusive power to the Senate to declare war, thinking it safer to refuse the first altogether, and to vest the latter in Congress.”

In his pamphlet he concludes the 5th page of his argument in favor of the first power with these remarks—“In short, from their example [other republics] and from our own experience, there can be no truth more evident than this, that unless our Government is consolidated as far as is practicable, by retrenching the State authorities, and centering as much force & vigor in the Union, as are adequate to its exigencies, we shall soon be a divided, and consequently an unhappy people. I shall ever consider the revision and negation of the State laws, as one great and leading step to this reform, and have therefore conceived it proper to bring it into view.”

On the 23. August he moved a proposition to vest this power in the Legislature, provided # of each House assented.

He does not designate the depository of the power to declare war & consequently avows no change of opinion on that subject in the pamphlet, altho' it was printed after the adjournment of the Convention and is stated to embrace the “observations he delivered at different times in the course of their discussions.”

J. M. has a copy of the pamphlet much mutilated by dampness; but one in complete preservation is bound up with “Select Tracts Vol. 2. belonging to the New York Historical Society, numbered 2687.

Title

Observations on the plan of Government submitted to the Federal Convention, in Philadelphia, on the 28th. of May 1787. By Mr. Charles Pinkney, Delegate from the State of South Carolina, delivered at different times in the course of their discussions.”

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New York:—Printed by Francis Childs.— *State Dept. Const. MSS.*