

the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

*Sect. 4.* The United States shall guarantee to every state in this union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature or executive, against domestic violence.

## V

The Congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, shall propose amendments to this constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures of the several states, or by 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                      and                      section of                      article

## VI

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.

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.

The senators and representatives beforementioned, 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.

## VII

The ratification of the conventions of nine States, shall be sufficient for the establishment of this constitution between the States so ratifying the same.

Mr WILLIAMSON, observed to the House that no provision was yet made for juries in Civil cases and suggested the necessity of it.

Mr GORHAM. It is not possible to discriminate equity cases from those in which juries are proper. The Representatives of the people may be safely trusted in this matter.

Mr GERRY urged the necessity of Juries to guard ag<sup>st</sup> corrupt Judges. He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by Juries.

Col: MASON perceived the difficulty mentioned by Mr Gorham. The jury cases can not be specified. A general principle laid down on this and some other points would be sufficient. He wished the plan had been prefaced with a Bill of Rights, & would second a Motion if made for the purpose. It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.

Mr GERRY concurred in the idea & moved for a Committee to prepare a Bill of Rights. Col: MASON 2<sup>d</sup> the motion.

Mr SHERMAN, was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient. There are many cases where juries are proper which can not be discriminated. The Legislature may be safely trusted.

Col: MASON. The Laws of the U. S. are to be paramount to State Bills of Rights.

On the question for a Com<sup>s</sup> to prepare a Bill of Rights

N. H. no. Mas. abs<sup>t</sup> C<sup>t</sup> no. N. J. no. P<sup>a</sup> no. Del no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no. [Ayes, 0; noes, 10.]



*Friday, September 14. In Convention*

M<sup>r</sup> PINKNEY & M<sup>r</sup> GERRY, moved to insert a declaration "that the liberty of the Press should be inviolably observed."

M<sup>r</sup> SHERMAN. It is unnecessary. The power of Congress does not extend to the Press. On the question, it passed in the negative

N. H. no. Mas. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. no. S. C. ay. Geo. no. [Ayes, 4; noes, 7.]

*Saturday, September 15. In Convention*

Art. V. . . .

M<sup>r</sup> SHERMAN expressed his fears that three fourths of the States might be brought to do things fatal to particular States, as abolishing them altogether or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the States importing slaves should be extended so as to provide that no State should be affected in its internal police, or deprived of its equality in the Senate.

Col: MASON thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case.

M<sup>r</sup> GOV<sup>r</sup> MORRIS & M<sup>r</sup> GERRY moved to amend the article so as to require a Convention on application of  $\frac{2}{3}$  of the Sts.

M<sup>r</sup> MADISON did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a Convention on the like application. He saw no objection however against providing for a Convention for the purpose of amendments, except only that difficulties might

arise as to the form, the quorum &c. which in Constitutional regulations ought to be as much as possible avoided.

The motion of M<sup>r</sup> GOV<sup>r</sup> MORRIS & M<sup>r</sup> GERRY was agreed to nem: con: . . .

M<sup>r</sup> SHERMAN moved according to his idea . . . to annex to the end of the article a further proviso "that no State shall without its consent be affected in its internal police, or deprived of its equal suffrage in the Senate."

M<sup>r</sup> MADISON. Begin with these special provisos, and every State will insist on them, for their boundaries, exports &c.

On the motion of M<sup>r</sup> Sherman

N. H. no. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. ay. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no. [Ayes, 3; noes, 8.]

M<sup>r</sup> GOV<sup>r</sup> MORRIS moved to annex a further proviso—"that no State, without its consent shall be deprived of its equal suffrage in the Senate"

This motion being dictated by the circulating murmurs of the small States was agreed to without debate, no one opposing it, or on the question, saying no.

M<sup>r</sup> RANDOLPH animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention, on the close of the great & awful subject of their labours, and anxiously wishing for some accomodating expedient which would relieve him from his embarrassments, made a motion importing "that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by another general Convention" Should this proposition be disregarded, it would he said be impossible for him to put his name to the instrument. Whether he should oppose it afterwards he would not then decide but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment.

Col: MASON 2<sup>d</sup> & followed M<sup>r</sup> Randolph in animadversions



on the dangerous power and structure of the Government, concluding that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention as proposed, he could sign.

Mr PINKNEY. These declarations from members so respectable at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations & amendments of the different States on the subject of Government at large. Nothing but confusion & contrariety could spring from the experiment. The States will never agree in their plans, and the Deputies to a second Convention coming together under the discordant impressions of their Constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections as well as others to the plan. He objected to the contemptible weakness & dependence of the Executive. He objected to the power of a majority only of Congress over Commerce. But apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

Mr GERRY, stated the objections which determined him to withhold his name from the Constitution. 1. the duration and re-eligibility of the Senate. 2. the power of the House of Representatives to conceal their journals. 3. the power of Congress over the places of election. 4 the unlimited power of Congress over their own compensations. 5. Massachusetts has not a due share of Representatives allotted to her. 6. 3/5 of the Blacks are to be represented as if they were freemen. 7. Under the power over commerce, monopolies may be established. 8. The vice president being made head of the Senate. He could however he

said get over all these, if the rights of the Citizens were not rendered insecure 1. by the general power of the Legislature to make what laws they may please to call necessary and proper. 2. raise armies and money without limit. 3. to establish a tribunal without juries, which will be a Star-chamber as to Civil cases. Under such a view of the Constitution, the best that could be done he conceived was to provide for a second general Convention.

On the question on the proposition of Mr Randolph. All the States answered—no

On the question to agree to the Constitution, as amended. All the States ay.

The Constitution was then ordered to be engrossed.

### MASON'S OBJECTIONS

Mason wrote his "Objections to this Constitution of Government" on the blank pages of his copy of the draft of September 12, and communicated these ideas to several people. The material in parentheses below indicates changes made before this statement was printed in pamphlet form.<sup>1</sup>

There is no Declaration of Rights, and the laws of the general government being paramount to the laws and constitution of the several States, the Declaration of Rights in the separate States are no security. Nor are the people secured even in the enjoyment of the benefit of the common law (which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several States).

In the House of Representatives there is not the substance but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people; the laws will therefore be generally made by men

<sup>1</sup> [Farrand, *Records*, II, 637-40, quoting from Kate Mason Rowland, *The Life of George Mason, 1725-1792* (2 vols., New York and London, 1892), II, 387-90.]



little concerned in, and unacquainted with their effects and consequences. (This objection has been in some degree lessened by an amendment, often before refused and at last made by an erasure, after the engrossment upon parchment of the word forty and inserting thirty, in the third clause of the second section of the first article.)

The Senate have the power of altering all money bills, and of originating appropriations of money, and the salaries of the officers of their own appointment, in conjunction with the president of the United States, although they are not the representatives of the people or amenable to them.

These with their other great powers, viz.: their power in the appointment of ambassadors and all public officers, in making treaties, and in trying all impeachments, their influence upon and connection with the supreme Executive from these causes, their duration of office and their being a constantly existing body, almost continually sitting, joined with their being one complete branch of the legislature, will destroy any balance in the government, and enable them to accomplish what usurpations they please upon the rights and liberties of the people.

The Judiciary of the United States is so constructed and extended, as to absorb and destroy the judiciaries of the several States; thereby rendering law as tedious intricate and expensive, and justice as unattainable, by a great part of the community, as in England, and enabling the rich to oppress and ruin the poor.

The President of the United States has no Constitutional Council, a thing unknown in any safe and regular government. He will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites; or he will become a tool to the Senate—or a Council of State will grow out of the principal officers of the great departments; the worst and most dangerous of all ingredients for such a Council in a free country; (for they may be induced to join in any dangerous or oppressive measures, to shelter themselves, and prevent an inquiry into their own misconduct in office. Whereas, had a constitutional council been formed (as was

proposed) of six members, viz.: two from the Eastern, two from the Middle, and two from the Southern States, to be appointed by vote of the States in the House of Representatives, with the same duration and rotation of office as the Senate, the executive would always have had safe and proper information and advice; the president of such a council might have acted as Vice-President of the United States pro tempore, upon any vacancy or disability of the chief magistrate; and long continued sessions of the Senate, would in a great measure have been prevented.) From this fatal defect has arisen the improper power of the Senate in the appointment of public officers, and the alarming dependence and connection between that branch of the legislature and the supreme Executive.

Hence also sprung that unnecessary (and dangerous) officer the Vice-President, who for want of other employment is made president of the Senate, thereby dangerously blending the executive and legislative powers, besides always giving to some one of the States an unnecessary and unjust preeminence over the others.

The President of the United States has the unrestrained power of granting pardons for treason, which may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt.

By declaring all treaties supreme laws of the land, the Executive and the Senate have, in many cases, an exclusive power of legislation; which might have been avoided by proper distinctions with respect to treaties, and requiring the assent of the House of Representatives, where it could be done with safety.

By requiring only a majority to make all commercial and navigation laws, the five Southern States, whose produce and circumstances are totally different from that of the eight Northern and Eastern States, may (will) be ruined, for such rigid and premature regulations may be made as will enable the merchants of the Northern and Eastern States not only to demand an exorbitant freight, but to monopolize the purchase of the commodities at their own price, for many years, to the great in-



jury of the landed interest, and (the) impoverishment of the people; and the danger is the greater as the gain on one side will be in proportion to the loss on the other. Whereas requiring two-thirds of the members present in both Houses would have produced mutual moderation, promoted the general interest, and removed an insuperable objection to the adoption of this (the) government.

Under their own construction of the general clause, at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their powers (power) as far as they shall think proper; so that the State legislatures have no security for the powers now presumed to remain to them, or the people for their rights.

There is no declaration of any kind, for preserving the liberty of the press, or the trial by jury in civil causes (cases); nor against the danger of standing armies in time of peace.

The State legislatures are restrained from laying export duties on their own produce.

Both the general legislature and the State legislature are expressly prohibited making *ex post facto* laws; though there never was nor can be a legislature but must and will make such laws, when necessity and the public safety require them; which will hereafter be a breach of all the constitutions in the Union, and afford precedents for other innovations.

This government will set out (commence) a moderate aristocracy: it is at present impossible to foresee whether it will, in its operation, produce a monarchy or a corrupt, tyrannical (oppressive) aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other.

The general legislature is restrained from prohibiting the further importation of slaves for twenty odd years; though such importations render the United States weaker, more vulnerable, and less capable of defence.

## THE LAST DAY OF THE CONVENTION

*Monday, September 17. In Convention*

The engrossed Constitution being read,

Doc<sup>t</sup> FRANKLIN rose with a speech in his hand, which he had reduced to writing for his own conveniency, and which Mr Wilson read in the words following.

Mr President

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in Religion, think themselves in possession of all truth, and that wherever others differ from them it is so far error. . . . But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain french lady, who in a dispute with her sister, said "I don't know how it happens, Sister but I meet with no body but myself, that's always in the right—*Il n'y a que moi qui a toujours raison.*"

In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain, may



be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects & great advantages resulting naturally in our favor among foreign Nations as well as among ourselves, from our real or apparent unanimity. Much of the strength & efficiency of any Government in procuring and securing happiness to the people, depends, on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress & confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts & endeavors to the means of having it well administred.

On the whole, Sir, I can not help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.—

He then moved that the Constitution be signed by the members and offered the following as a convenient form viz. "Done in Convention by the unanimous consent of *the States* present the 17<sup>th</sup> of Sep<sup>r</sup> &c—In Witness whereof we have hereunto subscribed our names."

This ambiguous form had been drawn up by M<sup>r</sup> G. M. in order to gain the dissenting members, and put into the hands of Doc<sup>r</sup> Franklin that it might have the better chance of success.

M<sup>r</sup> GORHAM said if it was not too late he could wish, for the purpose of lessening objections to the Constitution, that the clause declaring "the number of Representatives shall not exceed one for every forty thousand" which had produced so much discussion, might be yet reconsidered, in order to strike out 40,000 & insert "thirty thousand." . . .

When the PRESIDENT rose, for the purpose of putting the question, he said that although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of Representatives had been considered by many members of the Convention an insufficient security for the rights & interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan, and late as the present moment was for admitting amendments, he thought this of so much consequence that it would give much satisfaction to see it adopted <sup>1</sup>

No opposition was made to the proposition of M<sup>r</sup> Gorham and it was agreed to unanimously.

On the question to agree to the Constitution enrolled in order to be signed. It was agreed to all the States answering ay.

M<sup>r</sup> RANDOLPH then rose and with an allusion to the obser-

<sup>1</sup> This was the only occasion on which the President entered at all into the discussions of the Convention.



vations of Doc<sup>t</sup> Franklin apologized for his refusing to sign the Constitution notwithstanding the vast majority & venerable names that would give sanction to its wisdom and its worth. He said however that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the Convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

Mr Gov<sup>t</sup> MORRIS said that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor and by that determination he should abide. The moment this plan goes forth all other considerations will be laid aside, and the great question will be, shall there be a national Government or not? and this must take place or a general anarchy will be the alternative. He remarked that the signing in the form proposed related only to the fact that the *States* present were unanimous.

Mr WILLIAMSON suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would he found be satisfactory to some members who disliked the Constitution. For himself he did not think a better plan was to be expected and had no scruples against putting his name to it.

Mr HAMILTON expressed his anxiety that every member should sign. A few characters of consequence, by opposing or even refusing to sign the Constitution, might do infinite mischief by kindling the latent sparks which lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from the plan than his were known to be; but is it possible to deliberate between anarchy

and Convulsion on one side, and the chance of good to be expected from the plan on the other.

Mr RANDOLPH could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form therefore could make no difference with him. He repeated that in refusing to sign the Constitution, he took a step which might be the most awful of his life, but it was dictated by his conscience, and it was not possible for him to hesitate, much less, to change. He repeated also his persuasion, that the holding out this plan with a final alternative to the people, of accepting or rejecting it in toto, would really produce the anarchy & civil convulsions which were apprehended from the refusal of individuals to sign it.

Mr GERRY described the painful feelings of his situation, and the embarrassment under which he rose to offer any further observations on the subject w<sup>ch</sup> had been finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself bound as he was disposed to treat it with the respect due to the Act of the Convention. He hoped he should not violate that respect in declaring on this occasion his fears that a Civil war may result from the present crisis of the U. S. In Massachussetts, particularly he saw the danger of this calamitous event—In that State there are two parties, one devoted to Democracy, the worst he thought of all political evils, the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this & other reasons that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it has been passed by the Convention, he was persuaded it would have a contrary effect. He could not therefore by signing the Constitution pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Doc<sup>t</sup> Franklin, he could not he said

but view them as levelled at himself and the other gentlemen who meant not to sign;

Gen<sup>l</sup> PINKNEY. We are not likely to gain many converts by the ambiguity of the proposed form of signing. He thought it best to be candid and let the form speak the substance. If the meaning of the signers be left in doubt, his purpose would not be answered. He should sign the Constitution with a view to support it with all his influence, and wished to pledge himself accordingly.

Mr INGERSOL did not consider the signing, either as a mere attestation of the fact, or as pledging the signers to support the Constitution at all events; but as a recommendation, of what, all things considered, was the most eligible.

On the motion of Doc<sup>r</sup> Franklin

N. H. ay. Mas. ay. Ct<sup>l</sup> ay. N. J. ay. Pa<sup>a</sup> ay. Del. ay. Md<sup>a</sup> ay. Va<sup>a</sup> ay. N. C. ay. S. C. div<sup>d</sup> 2 Geo. ay. [Ayes, 10; noes, 0; divided, 1.]

The members then proceeded to sign the instrument.

Whilst the last members were signing it Doct<sup>r</sup> FRANKLIN looking towards the Presidents Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.

The Constitution being signed by all the members except Mr Randolph, Mr Mason, and Mr Gerry who declined giving it the sanction of their names, the Convention dissolved itself by an Adjournment sine die—

<sup>2</sup> Gen<sup>l</sup> Pinkney & Mr Butler disliked the equivocal form of the signing, and on that account voted in the negative.

## IV

### THE CONSTITUTION AND THE RATIFICATION