

*A Sketch Never Finished nor Applied*²

As the weakness and wants of man naturally lead to an association of individuals, under a common authority whereby each may have the protection of the whole against danger from without, and enjoy in safety within, the advantages of social intercourse, and an exchange of the necessaries & comforts of life: in like manner feeble communities, independent of each other, have resorted to a Union, less intimate, but with common Councils, for the common safety agst powerful neighbors, and for the preservation of justice and peace among themselves. Ancient history furnishes examples of these confederal³ associations, tho' with a very imperfect account, of their structure, and of the attributes and functions of the presiding Authority. There are examples of modern date also, some of them still existing, the modifications and transactions of which are sufficiently known.

It remained for the British Colonies, now United States, of North America, to add to those examples, one of a more interesting character than any of them: which led to a system without a⁴ example ancient or modern, a system founded on popular rights, and so combining a federal form with the forms of individual Republics, as may enable each to supply the defects of the other and obtain the advantages of both.⁵

1 The proposed Preface has been printed from Madison's original manuscript in the Department of State. There is a transcript of the Preface in an unknown hand in the Library of Congress, which was sent to the printer and from which Henry D. Gilpin printed *The Papers of James Madison*, 3 volumes (1840). The text of the Preface as here printed has been read with the printer's copy thereof and important differences noted.

In the Preface, Madison referred in passing to documents which he evidently intended to embody in a finished draft which, unfortunately, he never completed. The matter referred to has been placed in footnotes or reference has been made to other pages of the present volume.

Footnotes bearing star or dagger instead of figures to indicate their order, are Madison's own notes and have been placed above the line. The editors' notes and indications of differences between the Madison manuscript and the transcript of the Preface have been numbered and placed below the line.

2 These are the words which Madison wrote at the head of this document after he had scratched out the phrase "Preface to Debates in the Convention of 1787." It is a very rough and uneven draft, full of insertions and deletions. The last few pages are in Mrs. Madison's hand, having been written from her husband's dictation when his hands were crippled with rheumatism. A few words in the draft were written by John C. Payne (Mrs. Madison's brother) at Madison's direction. The date of the draft was between 1830 and 1836.

3 The word "confederate" is substituted in the transcript for "confederal."

4 The word "an" is substituted in the transcript for "a."

5 In place of "the advantages of both" the transcript reads "that advantage of both."

Whilst the Colonies enjoyed the protection of the parent Country as it was called, against foreign danger; and were secured by its superintending controul, against conflicts among themselves, they continued independent of each other, under a common, tho' limited dependence, on the parental Authority. When however the growth of the offspring in strength and in wealth, awakened the jealousy and tempted the avidity of the parent, into schemes of usurpation & exaction, the obligation was felt by the former of uniting their counsels and efforts to avert the impending calamity.

As early as the year 1754, indications having been given of a design in the British Government to levy contributions on the Colonies, without their consent; a meeting of Colonial deputies took place at Albany, which attempted to introduce a compromising substitute, that might at once satisfy the British requisitions, and save their own rights from violation. The attempt had no other effect, than by bringing these rights into a more conspicuous view, to invigorate the attachment to them, on ⁶ one side; and to nourish the haughty & encroaching spirit on the other.

In 1774. The progress made by G. B. in the open assertion of her pretensions, and in ⁷ the apprehended purpose of otherwise maintaining them than by Legislative enactments and declarations, had been such that the Colonies did not hesitate to assemble, by their deputies, in a formal Congress, authorized to oppose to the British innovations whatever measures might be found best adapted to the occasion; without however losing sight of an eventual reconciliation.

The dissuasive measures of that Congress, being without effect, another Congress was held in 1775, whose pacific efforts to bring about a change in the views of the other party, being equally unavailing, and the commencement of actual hostilities having at length put an end to all hope of reconciliation; the Congress finding moreover that the popular voice began to call for an entire & perpetual dissolution of the political ties which had connected them with G. B., proceeded on the memorable 4th of July, 1776 to declare the 13 Colonies, Independent States.⁸

⁶ The word "the" is here inserted in the transcript.

⁷ The word "in" is omitted in the transcript.

⁸ The words "Independent States" are italicized in the transcript.

During the discussions of this solemn Act, a Committee consisting of a member from each colony had been appointed to prepare & digest a form of Confederation, for the future management of the common interests, which had hitherto been left to the discretion of Congress, guided by the exigences of the contest, and by the known intentions or occasional instructions of the Colonial Legislatures.

It appears that as early as the 21st of July 1775, A plan entitled "Articles of Confederation & *perpetual* Union of the Colonies" had been sketched by Doc^r Franklin, the plan being on that day submitted by him to Congress; and tho' not copied into their Journals remaining on their files in his handwriting. But notwithstanding the term "perpetual" observed in the title, the articles provided expressly for the event of a return of the Colonies to a connection with G. Britain.

This sketch became a basis for the plan reported by the Com^e on the 12 of July, now also remaining on the files of Congress, in the handwriting of M^r Dickinson. The plan, tho' dated after the Declaration of Independence, was probably drawn up before that event; since the name of *Colonies*, not *States* is used throughout the draught. The plan reported, was debated and amended from time to time, till the 17th of November 1777, when it was agreed to by Congress, and proposed to the Legislatures of the States, with an explanatory and recommendatory letter. The ratifications of these by their Delegates in Cong^s duly authorized took place at successive dates; but were not compleated till March 1.⁹ 1781, when Maryland who had made it a prerequisite that the vacant lands acquired from the British Crown should be a Common fund, yielded to the persuasion that a final & formal establishment of the federal Union & Gov^t would make a favorable impression not only on other foreign Nations, but on G. B. herself.

The great difficulty experienced in so framing the fed^l system as to obtain the unanimity required for its due sanction, may be inferred from the long interval, and recurring discussions, between the commencement and completion of the work; from the changes made during its progress; from the language of Cong^s when proposing it to the States, w^{ch} dwelt on the impracticability of devising a system acceptable to all of them; from the reluctant assent given by some; and the

⁹ The phrase "the first of March" is substituted in the transcript for "March 1."

various alterations proposed by others; and by a tardiness in others again which produced a special address to them from Cong^s enforcing the duty of sacrificing local considerations and favorite opinions to the public safety, and the necessary harmony: Nor was the assent of some of the States finally yielded without strong protests against particular articles, and a reliance on future amendments removing their objections.

It is to be recollected, no doubt, that these delays might be occasioned in some degree, by an occupation of the public Councils both general & local, with the deliberations and measures, essential to a Revolutionary struggle; But there must have been a balance for these causes, in the obvious motives to hasten the establishment of a regular and efficient Gov^t; and in the tendency of the crisis to repress opinions and pretensions, which might be inflexible in another state of things.

The principal difficulties which embarrassed the progress, and retarded the completion of the plan of Confederation, may be traced to 1.¹⁰ the natural repugnance of the parties to a relinquishment of power: 2.¹⁰ a natural jealousy of its abuse in other hands than their own: 3.¹⁰ the rule of suffrage among parties unequal in size, but equal in sovereignty. 4 the ratio of contributions in money and in troops, among parties,¹¹ whose inequality in size did not correspond with that of their wealth, or of their military or free population. 5.¹² the selection and definition of the powers, at once necessary to the federal head, and safe to the several members.

To these sources of difficulty, incident to the formation of all such Confederacies, were added two others one of a temporary, the other of a permanent nature. The first was the case of the Crown lands, so called because they had been held by the British Crown, and being ungranted to individuals when its authority ceased, were considered by the States within whose charters or asserted limits they lay, as devolving on them; whilst it was contended by the others, that being wrested from the dethroned authority, by the equal exertion of all, they resulted of right and in equity to the benefit of all. The lands being of vast extent and of growing value, were the occasion of much

10 The figures 1, 2, and 3 are changed to "first," "secondly" and "thirdly" in the transcript.

11 The phrase "unequal in size, but equal in sovereignty. 4 the ratio of contributions in money and in troops, among parties" is erroneously omitted in the transcript.

12 The figure 5 is changed to "fourthly" in the transcript.

discussion & heart-burning ; & proved the most obstinate of the impediments to an earlier consummation of the plan of federal Gov^t. The State of Maryland the last that acceded to it held out as already noticed, till March 1,¹³ 1781, and then yielded only to the hope that by giving a stable & authoritative character to the Confederation, a successful termination of the Contest might be accelerated. The dispute was happily compromised by successive surrenders of portions of the territory by the States having exclusive claims to it, and acceptances of them by Congress.

The other source of dissatisfaction was the peculiar situation of some of the States, which having no convenient ports for foreign commerce, were subject to be taxed by their neighbors, thro whose ports, their commerce was carryed on. New Jersey, placed between Phil^a & N. York, was likened to a cask tapped at both ends ; and N. Carolina, between Virg^a & S. Carolina to a patient bleeding at both arms. The Articles of Confederation provided no remedy for the complaint : which produced a strong protest on the part of N. Jersey ; and never ceased to be a source of dissatisfaction & discord, until the new Constitution, superseded the old.

But the radical infirmity of the "art^s of Confederation" was the dependence of Cong^s on the voluntary and simultaneous compliance ✓ with its Requisitions, by so many independant Communities, each consulting more or less its particular interests & convenience and dis- ✓ trusting the compliance of the others. Whilst the paper emissions of Cong^s continued to circulate they were employed as a sinew of war, like gold & silver. When that ceased to be the case, the fatal defect of the political System was felt in its alarming force. The war was merely kept alive and brought to a successful conclusion by such foreign aids and temporary expedients as could be applied ; a hope prevailing with many, and a wish with all, that a state of peace, and the sources of prosperity opened by it, would give to the Confederacy in practice, the efficiency which had been inferred from its theory.

The close of the war however brought no cure for the public embarrassments. The States relieved from the pressure of foreign danger, and flushed with the enjoyment of independent and sovereign

13 In the transcript the date reads "the first of March, 1781."

power; [instead of a diminished disposition to part with it,] persevered in omissions and in measures incompatible with thier relations to the Federal Gov^t and with those among themselves;

Having served as a member of Con^s through the period between Mar. 1780 & the arrival of peace in 1783, I had become intimately acquainted with the public distresses and the causes of them. I had observed the successful opposition to every attempt to procure a remedy by new grants of power to Cong^s. I had found moreover that despair of success hung over the compromising provision ¹⁴ of April 1783 for the public necessities which had been so elaborately planned, and so impressively recommended to the States.* Sympathizing, under this aspect of affairs, in the alarm of the friends of free Gov^t, at the threatened danger of an abortive result to the great & perhaps last experiment in its favour, I could not be insensible to the obligation to co-operate ¹⁶ as far as I could in averting the calamity. With this view I acceded to the desire of my fellow Citizens of the County that I should be one of its representatives in the Legislature, hoping that I might there best contribute to inculcate the critical posture to which the Revolutionary cause was reduced, and the merit of a leading agency of the State in bringing about a rescue of the Union and the blessings of liberty a ¹⁷ staked on it, from an impending catastrophe.

It required but little time after taking my seat in the House of Delegates in May 1784 to discover that, however favorable the general disposition of the State might be towards the Confederacy the Legislature retained the aversion of its predecessors to transfers of power from the State to the Gov^t of the Union; notwithstanding the urgent demands of the Federal Treasury; the glaring inadequacy of the authorized mode of supplying it, the rapid growth of anarchy in the Fed^l System, and the animosity kindled among the States by their conflicting regulations.

The temper of the Legislature & the wayward course of its proceedings may be gathered from the Journals of its Sessions in the years 1784 & 1785.

¹⁴ The word "principle" is substituted for "provision" in the transcript.

* See address of Congress.¹⁵

¹⁵ This footnote is omitted in the transcript.

¹⁶ The word "aid" is substituted in the transcript for "co-operate."

¹⁷ The word "a" is omitted in the transcript.

The failure however of the varied propositions in the Legislature, for enlarging the powers of Congress, the continued failure of the efforts of Con^s to obtain from them the means of providing for the debts of the Revolution; and of countervailing the commercial laws of G. B. a source of much irritation & agst which the separate efforts of the States were found worse than abortive; these Considerations with the lights thrown on the whole subject, by the free & full discussion it had undergone led to an ¹⁸ general acquiescence in the Resolⁿ passed, on the 21. of Jan^y 1786, which proposed & invited a meeting of Deputies from all the States to "insert the Resol (See Journal.) 1."¹⁹

The resolution had been brought forward some weeks before on the failure of a proposed grant of power to Congress to collect a revenue from commerce, which had been abandoned by its friends in consequence of material alterations made in the grant by a Committee of the whole. The Resolution tho introduced by M^r Tyler an influential member, who having never served in Congress, had more the ear of the House than those whose services there exposed them to an imputable bias, was so little acceptable that it was not then persisted in. Being now revived by him, on the last day of the Session, and being the alternative of adjourning without any effort for the crisis in the affairs of the Union, it obtained a general vote; less however with some of its friends from a confidence in the success of the experiment than from a hope that it might prove a step to a more comprehensive & adequate provision for the wants of the Confederacy.

It happened also that Commissioners who had been ²⁰ appointed by Virg^a & Mary^d to settle the jurisdiction on waters dividing the two States had, apart from their official reports, recommended a uniformity in the regulations of the 2 States on several subjects & particularly on those having relation to foreign trade. It appeared at the same time that Mary^d had deemed a concurrence of her neighbors Pen^a & Delaware indispensable in such a case, who for like reasons would require that of their neighbors. So apt and forceable an illustration of the necessity of a uniformity throughout all the States could not but

¹⁸ The word "a" is substituted in the transcript for "an."

¹⁹ The phrase "to 'insert the Resol. (See Journal.) 1'" is omitted in the transcript which substitutes the words "as follows:" and inserts the resolution which is printed in this volume at page 47.

²⁰ The phrase "who had been" is omitted in the transcript.

favour the passage of a Resolution which proposed a Convention having that for its object.

The commissioners appointed by the Legisl: & who attended the Convention were E. Randolph the Attorney of the Statè, S^t Geo: Tucker & J. M.²¹ The designation of the time & place for its meeting to be proposed and communicated to the States having been left to the Com^{rs} they named for the time early²² September and for the place the City of Annapolis avoiding the residence of Cong^s and large Commercial Cities as liable to suspicions of an extraneous influence.

Altho the invited Meeting appeared to be generally favored, five States only assembled; some failing to make appointments, and some of the individuals appointed not hastening their attendance, the result in both cases being ascribed mainly, to a belief that the time had not arrived for such a political reform, as might be expected from a further experience of its necessity.

But in the interval between the proposal of the Convention and the time of its meeting, such had been the advance of public opinion in the desired direction, stimulated as it had been by the effect of the contemplated object, of the meeting, in turning the genal attention to the Critical State of things, and in calling forth the sentiments and exertions of the most enlightened & influencial patriots, that the Convention thin as it was did not scruple to decline the limited task assigned to it and to recommend to the States a Convention with powers adequate to the occasion. Nor was it²³ unnoticed that the commission of the N. Jersey Deputation, had extended its object to a general provision for the exigencies of the Union. A recommendation for this enlarged purpose was accordingly reported by a Com^e to whom the subject had been referred. It was drafted by Col: H.²⁴ and finally agreed to unanimously²⁵ in the following form. Insert it.²⁶

The recommendation was well rec^d by the Legislature of Virg^a which happened to be the *first* that *acted* on it, and the example of

²¹ James Madison.

²² In place of the word "early" the transcript reads "the first Monday in."

²³ The words "had it been" are substituted in the transcript for the words "was it."

²⁴ Alexander Hamilton.

²⁵ The word "unanimously" is omitted in the transcript.

²⁶ Madison's direction "Insert it" is omitted in the transcript, and there is inserted the text of the proceedings and recommendation of the Annapolis Convention for which see, *ante*, pages 48-52. The transcript text begins with the words "To the Honorable," and concludes with the paragraph beginning "Though your Commissioners," etc.

her compliance was made as conciliatory and impressive as possible. The Legislature were unanimous or very nearly so on the occasion, and ²⁷ as a proof of the magnitude & solemnity attached to it, they placed Gen^l W. at the head of the Deputation from the State; and as a proof of the deep interest he felt in the case he overstepped the obstacles to his acceptance of the appointment.

The law complying with the recommendation from Annapolis was in the terms following: ²⁸

A resort to a General Convention to remodel the Confederacy, was not a new idea. It had entered at an early date into the conversations and speculations of the most reflecting & foreseeing observers of the inadequacy of the powers allowed to Congress. In a pamphlet published in May 81 at the seat of Cong^s Pelatiah Webster an able tho' not conspicuous Citizen, after discussing the fiscal system of the U. States, and suggesting among other remedial provisions ²⁹ including a national Bank remarks that "the Authority of Cong^s at present is very inadequate to the performance of their duties; and this indicates the necessity of their calling a *Continental Convention* for the express purpose of ascertaining, defining, enlarging, and limiting, the duties & powers of their Constitution." ³⁰

On the 1. day of Ap^l 1783, Col. Hamilton, in a debate in Cong^s observed that ³¹

He alluded probably to [see Life of Schuyler in Longacre. ³²

It does not appear however that his expectation had been fulfilled.]

²⁷ The word "and" is omitted in the transcript.

²⁸ The text of this law of October 16, 1786 (printed *ante* pages 68-69) is inserted in the transcript beginning with the words "Whereas, the Commissioners," etc. and ending with the words ". . . States in the Union."

²⁹ The word "one" is here inserted in the transcript.

³⁰ Madison was in error. The pamphlet was written by William Barton. See Gaillard Hunt, "Pelatiah Webster and the Constitution," in *The Nation*, December 28, 1911.

³¹ The following is supplied in the transcript: "he wished instead of them [partial Conventions] to see a general Convention take place; and that he should soon, in pursuance of instructions, from his constituents, propose to Congress a plan for that purpose, the object [of which] would be to strengthen the Federal Constitution."—See *The Writings of James Madison*, Hunt, Editor, Vol. I (1900), pp. 438, 439.

³² The phrase "[see Life of Schuyler in Longacre]" is omitted in the transcript and the following quoted matter is substituted: "the resolutions introduced by General Schuyler in the Senate, and passed unanimously by the Legislature of New York in the summer of 1782, declaring, that the Confederation was defective, in not giving Congress power to provide a revenue for itself, or in not investing them with funds from established and productive sources; and that it would be advisable for Congress to recommend to the States to call a general Convention to revise and amend the Confederation."

The sketch is of Hamilton, not Schuyler, for which see *The National Portrait Gallery of Distinguished Americans*, conducted by Longacre and Herring, Vol. II (1835), p. 7.

In a letter to J. M. from R. H. Lee then President of Cong^s dated Nov^r 26, 1784 He says³³

The answer of J. M. remarks³⁴

³⁵ In 1785, Noah Webster whose pol. & other valuable writings had made him known to the public, in one of his publications of American policy brought into view the same resort for supplying the defects of the Fed^l System [see his life in Longacre].

The proposed & expected Convention at Annapolis the first of a general character that appears to have been realized, & the state of the public mind awakened by it had attracted the particular attention of Cong^s and favored the idea there of a Convention with fuller powers for amending the Confederacy.³⁶

It does not appear that in any of these cases, the reformed system was to be otherwise sanctioned than by the Legislative auth^y of the States; nor whether or how far, a change was to be made in the structure of the Depository of Federal powers.

The act of Virg^a providing for the Convention at Philad^a, was succeeded by appointments from³⁷ other States as their Legislatures were assembled, the appointments being selections from the most experienced & highest standing Citizens. Rh. I. was the only exception to a compliance with the recommendation from Annapolis, well known to have been swayed by an obdurate adherence to an advantage which her position gave her of taxing her neighbors thro' their consumption of imported supplies, an advantage which it was foreseen would

³³ The following sentence is supplied in the transcript: "It is by many here suggested as a very necessary step for Congress to take, the calling on the States to form a Convention for the sole purpose of revising the Confederation, so far as to enable Congress to execute with more energy, effect and vigor the powers assigned to it, than it appears by experience that they can do under the present state of things." The letter referred to is among the Madison papers in the Manuscript Division of the Library of Congress.

³⁴ The transcript here inserts the following: "I hold it for a maxim, that the Union of the States is essential to their safety against foreign danger and internal contention; and that the perpetuity and efficacy of the present system cannot be confided in. The question, therefore, is, in what mode, and at what moment, the experiment for supplying the defects ought to be made." —See, also, *The Writings of James Madison*, Hunt, Editor, Vol. II (1901), pp. 99, 100.

³⁵ The paragraph beginning "In 1785" reads as follows in the transcript: "In the winter of 1784-5, Noah Webster, whose political and other valuable writings had made him known to the public, proposed, in one of his publications, 'a new system of government which should act, not on the States, but directly on individuals, and vest in Congress full power to carry its laws into effect.'"

See, also, *The National Portrait Gallery of Distinguished Americans*, conducted by Longacre and Herring, Vol. II (1835), p. 4.

³⁶ In the transcript after the word "Confederacy" the following footnote is inserted: "The letters of Wm. Grayson, March 22d, 1786, and of James Monroe, of April 28th, 1786, both then members, to Mr. Madison, state that a proposition for such a Convention had been made."

³⁷ The word "the" is inserted in the transcript after "from."

be taken from her by a revisal of the "Articles of Confederation.

As the pub. mind had been ripened for a salutary Reform of the pol. System, in the interval between the proposal & the meeting, of Com^{rs} at Annapolis, the interval between the last event, and the meeting of Dep^s at Phil^a had continued to develop more & more the necessity & the extent of a Systematic provision for the preservation and Gov^t of the Union; among the ripening incidents was the Insurrection of Shays,³⁸ in Mass^{ts} against her Gov^t; which was with difficulty suppressed, notwithstanding the influence on the insurgents of an apprehended interposition of the Fed^l troops.

At the date of the Convention, the aspect & retrospect of the pol: condition of the U. S. could not but fill the pub. mind with a gloom which was relieved only by a hope that so select a Body would devise an adequate remedy for the existing and prospective evils so impressively demanding it.

It was seen that the public debt rendered so sacred by the cause in which it had been incurred remained without any provision for its payment. The reiterated and elaborate efforts of Con. to procure from the States a more adequate power to raise the means of payment had failed. The effect of the ordinary requisitions of Congress had only displayed the inefficiency³⁹ of the auth^y making them; none of the States having duly complied with them, some having failed altogether or nearly so; and⁴⁰ in one instance, that of N. Jersey⁴¹ a compliance was expressly⁴² refused; nor was more yielded to the expostulations of members of Cong^s deputed to her Legislature, than a mere repeal of the law, without a compliance. [see letter of Grayson to J. M.⁴³

38 The final "s" is crossed off the word "Shays" in the transcript.

39 The transcript substitutes the word "inefficacy" for the word "inefficiency" but the Gilpin edition prints the word as in the original notes.

40 In the transcript the word "and" is crossed out and the word "which" written above it.

41 After the word "Jersey," reference is made in the transcript to the following footnote: "A letter of Mr. Grayson to Mr. Madison of March 22d, 1786, relating the conduct of New Jersey states this fact. Editor."

42 The word "expressly" is italicized in the transcript.

43 The phrase "[see letter of Grayson to J. M." is omitted in the transcript. An extract from the letter referred to reads as follows: "The Antients were surely men of more candor than we are; they contended openly for an abolition of debts in so many words, while we strive as hard for the same thing under the decent & specious pretense of a circulating medium. . . . There has been some serious thoughts in the minds of some of the members of Congress to recommend to the States the meeting of a general Convention, to consider, of an alteration of the Confederation, & there is a motion to this effect now under consideration: it is contended that the present Confederation is utterly inefficient, and that if it remains much longer in it's present state of imbecility we shall be one of the most contemptible nations on the face of the earth."—Letter from William Grayson to James Madison, March 22, 1786. The Madison Papers (manuscript), Library of Congress.

The want of auth^y in Cong^s to regulate Commerce had produced in Foreign nations particularly G. B. a monopolizing policy injurious to the trade of the U. S. and destructive to their navigation; the imbecility and anticipated dissolution of the Confederacy extinguish^g all apprehensions of a Countervailing policy on the part of the U. States.

The same want of a general power over Commerce, led to an exercise of the power separately, by the States, w^{ch} not only proved abortive, but engendered rival, conflicting and angry regulations. Besides the vain attempts to supply their respective treasuries by imposts, which turned their commerce into the neighbouring ports, and to coerce a relaxation of the British monopoly of the W. Ind^a navigation, which was attempted by Virg^a [see the Journal of] ⁴⁴ the States having ports for foreign commerce, taxed & irritated the adjoining States, trading thro' them, as N. Y. Pen^a Virg^a & S. Carolina. Some of the States, as Connecticut, taxed imports ⁴⁵ as from Mass^{ts} higher than imports even from G. B. of w^{ch} Mass^{ts} complained to Virg^a and doubtless to other States. [See letter of J. M. ⁴⁶ In sundry instances as of N. Y. N. J. P^a & Mary^d [see] ⁴⁷ the navigation laws treated the Citizens ⁴⁸ other States as aliens.

In certain cases the auth^y of the Confederacy was disregarded, as in violations not only of the Treaty of peace; but of Treaties with France & Holland, which were complained of to Cong^s.

In other cases the Fed^l Auth^y was violated by Treaties & wars with Indians, as by Geo: by troops raised & kept up with^t the consent of Cong^s as by Mass^{ts} by compacts with^t the consent of Cong^s as between Pen^a and N. Jersey, and between Virg^a & Mary^d. From the Legisl: Journals of Virg^a it appears, that a vote refusing to apply for a sanction of Cong^s was followed by a vote agst the communication of the Compact to Cong^s.

⁴⁴ In the transcript the footnote "See the Journal of her Legislature" is substituted for the phrase in brackets. The allusion is to the act of the Virginia Assembly passed January 21, 1786, imposing a tonnage tax of 5s. on vessels of foreigners.

⁴⁵ After the word "imports" down to the sentence beginning, "In sundry instances," the transcript reads "from others, as from Mass., which complained in a letter to the Executive of Virginia, and doubtless to those of other States."

⁴⁶ The facts are given in Madison's letter to Jefferson, January 22, 1786. *The Writings of James Madison*, Hunt, Editor, Vol. II (1901), p. 218.

⁴⁷ Madison's direction "[see]" is omitted in the transcript.

⁴⁸ The word "of" is inserted in the transcript after "Citizens."

In the internal administration of the States a violation of Contracts had become familiar in the form of depreciated paper made a legal tender, of property substituted for money, of Instalment laws, and of the occlusions of the Courts of Justice; although evident that all such interferences affected the rights of other States, relatively creditor,⁴⁹ as well as Citizens Creditors within the State.

Among the defects which had been severely felt was that of a uniformity in cases requiring it, as laws of naturalization,⁵⁰ bankruptcy, a Coercive authority operating on individuals and a guaranty of the internal tranquility of the States.

As natural consequences⁵¹ of this distracted and disheartening condition of the union, the Fed^l Auth^y had ceased to be respected abroad, and dispositions⁵² shewn there, particularly in G. B., to take advantage of its imbecility, and to speculate on its approaching downfall; at home it had lost all confidence & credit; the unstable and unjust career of the States had also forfeited the respect & confidence essential to order and good Gov^t, involving a general decay of confidence & credit between man & man. It was found moreover, that those least partial to popular Gov^t, or most distrustful of its efficacy were yielding to anticipations, that from an increase of the confusion a Gov^t might result more congenial with their taste or their opinions; whilst those most devoted to the principles and forms of Republics, were alarmed for the cause of liberty itself, at stake in the American Experiment, and anxious for a system that w^d avoid the inefficacy of a mere confederacy without passing into the opposite extreme of a consolidated gov^t it was known that there were individuals who had betrayed a bias towards Monarchy [see Knox to G. W. & him to Jay] (Marshall's life⁵³) and there had always been some not unfavorable to a partition of the Union into several Confederacies; either from a better chance of figuring on a Sectional Theatre, or that the Sections would require stronger Gov^{ts}, or by their hostile conflicts lead to a mo-

49 The word "creditor" is plural in the transcript.

50 The word "and" is inserted in the transcript after "naturalization."

51 The words "a natural consequence" are substituted in the transcript for "natural consequences."

52 The word "were" is inserted in the transcript after "dispositions."

53 This direction in Madison's notes is omitted in the transcript. His reference was to *The Life of George Washington*, by John Marshall, Vol. V (1807), pp. 91 *et seq.* For the text of the correspondence in question, see Appendix to Debates, I, Nos. 1, 2 and 3, pp. 585-588.

narchical consolidation. The idea of a ⁵⁴ dismemberment had recently made its appearance in the Newspapers.

Such were the defects, the deformities, the diseases and the ominous prospects, for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding & appreciating the Constitutional Charter the remedy that was provided.

As a sketch on paper, the earliest perhaps of a Constitutional Gov^t for the Union [organized into the regular Departments with physical means operating on individuals] to be sanctioned by *the people of the States*, acting in their original & sovereign character, was contained in ⁵⁵ a letter of Apl. 8. 1787 from J. M. to Gov^r Randolph, a copy of the letter is here inserted.

The feature in the letter ⁵⁶ which vested in the general Authy. a negative on the laws of the States, was suggested by the negative in the head of the British Empire, which prevented collisions between the parts & the whole, and between the parts themselves. It was supposed that the substitution, of an elective and responsible authority for an hereditary and irresponsible one, would avoid the appearance even of a departure from the principle of ⁵⁷ Republicanism. But altho' the subject was so viewed in the Convention, and the votes on it were more than once equally divided, it was finally & justly abandoned see note for for this erasure substitute the amend^t marked * for this page ⁵⁸ [as, apart from other objections, it was not practicable among so many states, increasing in number, and enacting, each of them, so many laws. Instead of the proposed negative, the objects of it were left as finally provided for in the Constitution.] ⁵⁹

On the arrival of the Virginia Deputies at Philad^a it occurred to them that from the early and prominent part taken by that State in bringing about the Convention some initiative step might be expected

⁵⁴ The word "a" is omitted in the transcript.

⁵⁵ The phrase beginning with the words "a letter" down to the end of the paragraph is changed in the transcript to read as follows: "the letters of James Madison to Thomas Jefferson of the nineteenth of March; to Governor Randolph of the eighth of April; and to General Washington of the sixteenth of April, 1787, for which see these respective dates."

For the material portions of these letters see Appendix to Debates, II, Nos. 1, 2 and 3, pp. 589-595.

⁵⁶ The words "the letter" have been changed to "these letters" in the transcript.

⁵⁷ The words "the principle of" are omitted in the transcript.

⁵⁸ The words "see note for for this erasure substitute the amend^t marked * for this page" are omitted in the transcript.

⁵⁹ The passage enclosed in brackets is copied from the transcript. The original notes appear to have been lost since Gilpin's edition.

from them. The Resolutions introduced by Governor Randolph were the result of a Consultation on the subject; with an understanding that they left all the Deputies entirely open to the lights of discussion, and free to concur in any alterations or modifications which their reflections and judgments might approve. The Resolutions as the Journals shew became the basis on which the proceedings of the Convention commenced, and to the developments, variations and modifications of which the plan of Gov^t proposed by the Convention may be traced.

The curiosity I had felt during my researches into the History of the most distinguished Confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it more especially in what related to the process, the principles, the reasons, & the anticipations, which prevailed in the formation of them, determined me to preserve as far as I could an exact account of what might pass in the Convention whilst executing its trust, with the magnitude of which I was duly impressed, as I was with ⁶⁰ the gratification promised to future curiosity by an authentic exhibition of the objects, the opinions, & the reasonings from which the new System of Gov^t was to receive its peculiar structure & organization. Nor was I unaware of the value of such a contribution to the fund of materials for the History of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of Liberty throughout the world.

In pursuance of the task I had assumed I chose a seat in front of the presiding member, with the other members on my right & left hands. In this favorable position for hearing all that passed, I noted in terms legible & in abbreviations & marks intelligible to myself what was read from the Chair or spoken by the members; and losing not a moment unnecessarily between the adjournment & reassembling of the Convention I was enabled to write out my daily notes [see page 18—⁶¹ during the session or within a few finishing days after its close—see pa. 18⁶² in the extent and form preserved in my own hand on my files.

In the labour & correctness of doing ⁶³ this, I was not a little aided

60 The word "by" is substituted in the transcript for "with."

61 Madison's direction "[see page 18—]" is omitted in the transcript.

62 Madison's direction "see pa. 18" is omitted in the transcript.

63 The word "doing" is omitted in the transcript.

by practice & by a familiarity with the style and the train of observation & reasoning which characterized the principal speakers. It happened, also that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech, unless a very short one. Insert the Remark on the — slip of paper marked A.⁶⁴

[It may be proper to remark, that, with a very few exceptions, the speeches were neither furnished, nor revised, nor sanctioned, by the speakers, but written out from my notes, aided by the freshness of my recollections. A further remark may be proper, that views of the subject might occasionally be presented in the speeches and proceedings, with a latent reference to a compromise on some middle ground, by mutual concessions. The exceptions alluded to were,—first, the sketch furnished by Mr. Randolph of his speech on the introduction of his propositions, on the twenty-ninth day of May; secondly, the speech of Mr. Hamilton, who happened to call on me when putting the last hand to it, and who acknowledged its fidelity, without suggesting more than a very few verbal alterations which were made; thirdly, the speech of Gouverneur Morris on the second day of May, which was communicated to him on a like occasion, and who acquiesced in it without even a verbal change. The correctness of his language and the distinctness of his enunciation were particularly favorable to a reporter. The speeches of Doctor Franklin, excepting a few brief ones, were copied from the written ones read to the Convention by his colleague, Mr. Wilson, it being inconvenient to the Doctor to remain long on his feet.]⁶⁵

Of the ability & intelligence of those who composed the Convention, the debates & proceedings may be a test; as the character of the work which was the offspring of their deliberations must be tested by the experience of the future, added to that of the nearly half century which has passed.⁶⁶

But whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny,

⁶⁴ Madison's direction "Insert the Remark," etc. is omitted in the transcript.

⁶⁵ The passage enclosed in brackets is copied from the transcript. The original notes appear to have been lost since Gilpin's edition.

⁶⁶ The phrase "of the nearly half century" is changed to "of nearly half a century" in the transcript.

of the edifice prepared by them, I feel it a duty to express my profound & solemn conviction, derived from my intimate opportunity of observing & appreciating the views of the Convention, collectively & individually, that there never was an assembly of men, charged with a great & arduous trust, who were more pure in their motives, or more exclusively or anxiously [devoted to the object committed to them, than were the members of the Federal Convention of 1787, to the object of devising and proposing a constitutional system which would best supply the defects of that which it was to replace, and best secure the permanent liberty and happiness of their country.]⁶⁷

⁶⁷ The passage enclosed in brackets is copied from the transcript. The original notes appear to have been lost since Gilpin's edition.