

**James Madison to William Tyler, February 6, 1833.
Transcription from The Writings of James Madison.
Edited by Gaillard Hunt. October, 1900.**

TO JOHN TYLER.¹ MAD. MSS.

¹ The letter is in the hand of Madison's Secretary, and was not sent. Tyler was then Senator from Virginia.

[1833]

In your speech of Februray 6th, 1833, you say: "He (Edmund Randolph) proposed (in the Federal Convention of 1787) a Supreme National Government, with a Supreme Executive, a Supreme Legislature, and a Supreme Judiciary, and a power in Congress to veto State laws. Mr. Madison I believe, Sir, was also an advocate of this plan of govt. If I run into error on this point, I can easily be put right. The design of this plan, it is obvious, was to render the States nothing more than the provinces of a great Government, to tear upon the ruins of the old Confederacy a Consolidated Government, one and indivisible."

I readily do you the justice to believe that it was far from your intention to do injustice to the Virginia Deputies to the Convention of 1787. But it is not the less certain that it has been done to all of them, and particularly to Mr. Edmund Randolph.

The resolutions proposed by him, were the result of a Consultation among the Deputies, the whole number, seven, being present. The part which Virga. had borne in bringg abt. the Convention, suggested the Idea that some such initiative step might be expected from their Deputation; and Mr. Randolph was designated for the task. It was perfectly understood that the Propositions committed no one to their precise tenor or form; and that

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the members of the Deputation wd. be as free in discussing and shaping them as the other members of the Convention. Mr. R. was made the organ on the occasion, being then the Governor of the State, of distinguished talents, and in the habit of public Speaking. Genl. Washington, tho' at the head of the list was, for obvious reasons disinclined to take the lead. It was also foreseen that he would be immediately called to the presiding station.

Now what was the plan sketched in the Propositions?

They proposed that “the Articles of Confederation shd. be so corrected and enlarged as to accomplish the objects of their Institution, namely common defence, security of liberty, and general welfare;” (the words of the Confederation.)

That a National Legislature, a National Executive and a National Judiciary should be established. (this organization of Departments the same as in the adopted Constitution.)

“That the right of suffrage in the Legislature shd. be (not equal among the States as in the Confederation, but) proportioned to quotas of contribution or numbers of free inhabitants as might seem best in different cases: (the same corresponding in principle with the mixed rule adopted.)

“That it should consist of two branches; the first elected by the people of the several States, the second by the first, of a number nominated by the State Legislatures.” (a mode of forming a Senate regarded as more just to the large States, than the equality which was yielded to the Small States by the compromise with them, but not material in any other view. In reference to the practicable equilibrium between the General & the State authorities, the comparative influence of the two modes will depend on the question whether the small States will incline most to the former or to the latter scale).

“That a National Executive, with a Council of Revision consisting of a number of the Judiciary, (wc. Mr. Jefferson would have approved) and a qualified negative on the laws, be instituted, to be chosen by the Legislature for the term of—years, to be ineligible a

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second time, and with a compensation to be neither increased nor diminished so as to affect the existing magistracy. (there is nothing in this Ex modification materially different in its Constitutional bearing from that finally adopted in the Constitution of the U. S.)

That a National Judiciary be established, consisting of a Supreme appellate and inferior Tribunals, to hold their offices during good behavior, and with compensations not to be *increased* or diminished, so as to affect persons in office. (there can be nothing here subjecting it to unfavourable comparison with the article in the Constitution existing.)

“That provision ought to be made for the admission of new States lawfully arising within the limits of the U. S., wth. the consent of a number of votes in the Natl. Legislature less than the whole.” (This is not at variance wth. the existing provisions.)

“That a Republican Govt ought to be guarantied by the U. S. to each State. (this is among the existing provisions.)

“That provision ought to be made for amending the articles of Union, without requiring the Assent of the National Legislature. (this is done in the Constn.)

“That the Legisl. Ex. & Judiciary powers of the several States ought to be bound by oath to support the articles of Union (this was provided with the emphatic addition of “anything in the Constn. or laws of the States notwithstanding.)

“That the act of the Convention, after the approbation of the (then) Cong. to be submitted to an assembly or assemblies of Representatives recommended by the several Legislatures to be expressly chosen by the people to consider & decide thereon (This was the course pursued)

So much for the structure of the Govt. as proposed by Mr. Randolph, & for a few miscellaneous provisions. When compared with the Constn. as it stands what is there of a

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consolidating aspect that can be offensive to those who applaud approve or are satisfied with the Const:

Let it next be seen what were the powers proposed to be lodged in the Govt as distributed among its several Departments.

The Legislature, each branch possessing a right to originate acts, was to enjoy, 1. the *legislative* rights vested in the Congs of the Confederation.

(This must be free from objection, especially as the powers of that description were left to the selection of the Convention)

2. Cases to which the several States, would be incompetent or, in which the harmony of the U. S. might be intercepted by individual Legislation. (It cannot be supposed that these descriptive phrases were to be left in their indefinite extent to Legislative discretion. A selection & definition of the cases embraced by them was to be the task of the Convention. If there could be any doubt that this was intended & so understood by the Convention, it would be removed by the course of proceeding on them as recorded, in its Journal. Many of the propositions made in the Convention, fall within this remark; being, as is not unusual general in their phrase, but, if adopted to be reduced to their proper shape & specification.)

3. to negative all laws passed by the Several States contravening, in the opinion of the National Legislature, the Articles of Union, or any Treaty subsisting under their Authority (The necessity of some constitutional and effective provision guarding the Constn. & laws of the Union agst. violations of them by the laws of the States, was felt and taken for granted by all from the commencement, to the conclusion of the work performed by the Convention. Every vote, in the Journal involving the opinion, proves a unanimity among the Deputations on this point. A voluntary & unvaried concurrence of so many (then 13 with a prospect of continued increase) distinct & independent Authorities, in expounding & acting on a rule of Conduct, which must be the same for all, or in force in none, was a calculation forbidden by a knowledge of human nature, and especially so

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by the experience of the Confederacy, the defects of which were to be supplied by the Convention.

With this view of the subject, the only question was the mode of controul on the Individual Legislatures. This might be either preventive or corrective; the former by a negative on the State laws; the latter by a Legislative repeal by a judicial supersedeas, or by an administrative arrest of them. The preventive mode as the best if equally practicable with the corrective, was brought by Mr. R. to the consideration of the Convention. It was tho' not a little favored, as appears by the votes in the Journal finally abandoned, as not reducible to practice. Had the negative been assigned to the Senatorial branch of the Govt. representing the State Legislatures, thus giving to the whole of these a controul over each, the expedient would probably have been still more favorably recd. tho' even in that form, subject to insuperable objections, in the distance of many of the State Legislatures, and the multiplicity of the laws of each.

Of the corrective modes, a repeal by the National Legislature was pregnant with inconveniences rendering it inadmissible.

The only remaining safeguard to the Constitution and laws of the Union agst. the encroachment of its members, and anarchy among themselves is that which was adopted, in the Declaration that the Constitution laws & Treaties of the U. S. should be the supreme law of the Land, and as such, be obligatory on the authorities of the States as well as those of the U. S.

The last of the proposed Legislative Powers was "to call forth the force of the Union agst. any member failing to fulfil its duty under

the articles of Union."

The evident object of this provision was not to enlarge the powers of the proposed Govt. but to secure their efficiency. It was doubtless suggested by the inefficiency of the

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Confederate system, from the want of such a sanction; none such being expressed in its Articles; and if as Mr. Jefferson¹ argued, necessarily implied, having never been actually employed. The proposition as offered by Mr. R. was in general terms. It might have been taken into Consideration, as a substitute for, or as a supplement to the ordinary mode of enforcing laws by Civil process; or it might have been referred to cases

¹ See his published letter of Augt. 4, 1787 to Ed Carrington— *Madison's Note*.

of territorial or other controversies between States and a refusal of the defeated party to abide by the decision; leaving the alternative of a Coercive interposition by the Govt. of the Union, or a war between its members, and within its bowels. Neither of these readings nor any other, which the language wd. bear, could countenance a just charge on the deputation or on Mr. Randolph, of contemplating a Consolidated Govt. with unlimited powers.

The Executive powers do not cover more ground, than those inserted by the Convention to whose discretion the task of enumerating them was submitted. The proposed association with the Executive of a Council of Revision, could not give a consolidating feature to the plan.

The Judicial power in the Plan is more limited than the Jurisdiction described in the Const., with the exception of cases of "impeachment of any National officer," and questions which involve the National peace & harmony.

The trial of Impeach. is known to be one of the most difficult of Constl. arrangemts. The reference of it to the Judicial Dept. may be presumed to have been suggested by the example in the Constitution of Virga. The option seemed to lie between that & the other Depts. of the Govt. No example of an organization excluding all the Departs. presenting itself. Whether the Judil. mode proposed, was preferable to that inserted in the Const: or

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not, the difference cannot affect the question of a Consolidating aspect or tendency. The Executive powers do not cover more ground, than those inserted by the Convention

By questions involving “the Natl. peace and harmony,” no one can suppose more was meant than might be *specified* by the Convention as proper to be referred to the Judiciary, either by the Constn. or the Constl. Authority of the Legislature. They could be no rule, in that latitude, to a court, nor even to a Legislature with limited powers.

That the Convention understood the entire Resolutions of Mr. R to be a mere sketch in which omitted details were to be supplied and the general terms and phrases to be reduced to their proper details, is demonstrated by the use made of them in the Convention. They were taken up & referred to a Come. of the whole in that sense; discussed one by one; referred occasionally to special Coms. to Comes. of detail on special points, at length to a Come. to digest & report the draught of a Constn. and finally to a Come. of arrangement and diction.

On this review of the whole subject, candour discovers no ground for the charge, that the Resolns. contemplated a Govt. materially different from or more national than that in which they terminated, and certainly no ground for the charge of consolidating views in those from whom the Resolns. proceeded.

What then is the ground on which the charge rests? It cd. not be on a plea that the plan of Mr. R. gave unlimited powers to the proposed Govert for the plan expressly aimed at a specification, & of course a limitation of the powers.

It cd. not be on the supremacy of the general Authority over the separate authorities, for that supremacy as already noticed, is more fully & emphatically established by the text of the Constitution.

It cd. not be on the proposed ratification by the people instead of the States for such is the ratification on wch. the Constn. is founded.

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The charge must rest on the term National prefixed to the organized Depts. in the propositions of Mr. R. yet how easy it is to acct. for the use of the term witht. taking it in a consolidating sense.

In the 1st. place. It contradistinguished the proposed Govt. from the Confederacy wch. it was to supersede.

2. As the System was to be a new & compound one, a nondescript without a technical appellation for it, the term "national" was very naturally suggested by its national features: 1. in being estab. not by the authority of State Legs. but by the original authd. of the people. 2. in its organization into Legisl. Ex. & Judl. Depart. and 3. in its action on the people of the States immediately, and not on the Govts. of the States, as in a Confederacy.

But what alone would justify & acct for the application of the term National to the proposed Govt. is that it wd. possess, exclusively all the attributes of a Natl Govt. in its relations with other Nations, including the most essential one, of regulating foreign Commerce, with the effective means of fulfilling the oblig. & responsiby. of the U. S. to other Nations.

Hence it was that the term Natl. was at once so readily applied to the new Govt and that it has become so universal & familiar. It may safely be affirmed that the same w. have been the case, whatever name might have been given to it by the props. of Mr. R. or by the Convention. A Govt. which alone is known & acknowledged by all foreign nations, and alone charged with the international relations, could not fail to be deemed & called at home, a Natl. Govt.

After all, in discussing & expounding the character & import of a Constn. let candor decide whether it be not more reasonable & just to interpret the name or title by facts on the face of it, than to torture the facts by a bed of Procrustes into a fitness to the title.

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I must leave it to yourself to judge whether this exposition of the Resolns. in question be not sufficiently reasonable to protect them from the imputation of a consolidating tendency, and still more, the Virga. Deputies from having that for their object.

With regard to Mr. R. particularly, is not some respect due to his public letter to the Speaker of ye. H. of D. in which he gives for his refusal to sign the Constitn. reasons irreconcilable with the supposition that he cd. have proposed the Resolns. in a meaning charged on them? Of Col Mason who also refused, it may be inferred from his avowed reasons, that he cd. not have acquiesced in the propositions if understood or intended to effect a Conso Gov.

So much use has been made of Judge Yates's minutes of the debates in the Convention, that I must be allowed to remark that they abound in inaccuracies, and are not free from gross errors some of which do much injustice to the arguments & opinions of particular members. All this may be explained without a charge of wilful misrepresentation, by the very desultory manner in which his notes appear to have been taken his ear catching particular expressions & losing qualifications of them; and by prejudices giving to his mind, all the bias which an honest one could feel. He & his colleague were the Representatives of the dominant party in N. York, which was opposed to the Convention & the object of it, which was averse to any essential change in the Articles of Confederation, which had inflexibly refused to grant even a duty of 5 per ct on imports for the urgent debts of the Revolution; which was availing itself of the peculiar situation of New York, for taxing the consumption of her neighbours, and which foresaw that a primary aim of the Convention wd. be to transfer from the States to the common authority, the entire regulation of foreign commerce. Such were the feelings of the two Deputies, that on finding the Convention bent on a radical reform of the Federal system, they left it in the midst of its discussions and before the opinions & views of many of the members were drawn out to their final shape & practical application.

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Without impeaching the integrity of Luther Martin, it may be observed of him also, that his report of the proceedings of the Convention during his stay in it, shews, by its colourings that his feelings were but too much mingled with his statements and inferences. There is good ground for believing that Mr. M. himself became sensible of this and made no secret of his regret, that in his address to the Legislature of his State, he had been betrayed by the irritated state of his mind, into a picture that might do injustice both to the Body and to particular members.