

7-27-19 Program notes

These are a loose combination of notes used in the program.

Foreign Influence:

- New Constitution Creates a National Government, Will not Abate Foreign Influence, Dangers of Civil War and Despotism: March 7, 1788 Author - Unsigned

“Apportion the public debts in such a manner as to throw the unpopular ones on the back lands. Call only for requisitions for the foreign interest and aid them by loans. Keep on so till the American character be marked with some certain features. We are yet too young to know what we are fit for. The continual migration of people from Europe, and the settlement of new countries on our western frontiers, are strong arguments against making new experiments now in government. When these things are removed, we can with greater prospect of success, devise changes. We ought to consider, as Montesquieu says, whether the construction of the government be suitable to the genius and disposition of the people, as well as a variety of other circumstances.” We have been told of Phantoms, 11 June 1788 by William Grayson

Agrippa IX (excerpt)

28 December 1787

by James Winthrop, Agrippa

To the People.

We come now to the second and last article of complaint against the present confederation, which is, that Congress has not the sole power to regulate the intercourse between us and foreigners. Such a power extends not only to war and peace, but to trade and naturalization. This last article ought never to be given them; for though most of the states may be willing for certain reasons to receive foreigners as citizens, yet reasons of equal weight may induce other states, differently circumstanced, to keep their blood pure. Pennsylvania has chosen to receive all that would come there. Let any indifferent person judge whether that state in point of morals, education, energy is equal to any of the eastern states; the small state of Rhode-Island only excepted. Pennsylvania in the course of a century has acquired her present extent and population at the expense of religion and good morals. The eastern states have, by keeping separate from the foreign mixtures, acquired, their present greatness in the course of a century and an half, and have preserved their religion and morals. They have also preserved that manly virtue which is equally fitted for rendering them respectable in war, and industrious in peace.

The remaining power for peace and trade might perhaps be safely enough lodged with Congress under some limitations. Three restrictions appear to me to be essentially

necessary to preserve the equality of rights to the states, which it is the object of the state governments to secure to each citizen, 1st. It ought not to be in the power of Congress either by treaty or otherwise to alienate part of any state without the consent of the legislature. 2d. They ought not to be able by treaty or other law to give any legal preference to one part above another. 3d. They ought to be restrained from creating any monopolies. Perhaps others may propose different regulations and restrictions. One of these is to be found in the old confederation, and another in the newly proposed plan. The third seems to be equally necessary.

10 October 1787 by Richard Henry Lee, The Federal Farmer

There are some powers proposed to be lodged in the general government in the judicial department, I think very unnecessarily, I mean powers respecting questions arising upon the internal laws of the respective states. It is proper the federal judiciary should have powers co-extensive with the federal legislature – that is, the power of deciding finally on the laws of the union. By Art. 3. Sect. 2. the powers of the federal judiciary are extended (among other things) to all cases between a state and citizens of another state – between citizens of different states – between a state or the citizens thereof, and foreign states, citizens or subjects. Actions in all these cases, except against a state government, are now brought and finally determined in the law courts of the states respectively; and as there are no words to exclude these courts of their jurisdiction in these cases, they will have concurrent jurisdiction with the inferior federal courts in them; and, therefore, if the new constitution be adopted without any amendment in this respect, all those numerous actions, now brought in the state courts between our citizens and foreigners, between citizens of different states, by state governments against foreigners, and by state governments against citizens of other states, may also be brought in the federal courts; and an appeal will lay in them from the state courts, or federal inferior courts, to the supreme judicial court of the union. In almost all these cases, either party may have the trial by jury in the state courts; excepting paper money and tender laws, which are wisely guarded against in the proposed constitution, justice may be obtained in these courts on reasonable terms; they must be more competent to proper decisions on the laws of their respective states, than the federal courts can possibly be. I do not, in any point of view, see the need of opening a new jurisdiction to these causes – of opening a new scene of expensive law suits – of suffering foreigners, and citizens of different states, to drag each other many hundred miles into the federal courts. It is true, those courts may be so organized by a wise and prudent legislature, as to make the obtaining of justice in them tolerably easy; they may in general be organized on the common law principles of the country: But this benefit is by no means secured by the constitution. The trial by jury is secured only in those few criminal cases, to which the federal laws will extend – as crimes committed on the seas, against the laws of nations, treason, and counterfeiting the federal securities and coin: But even in these cases, the jury trial of the vicinage is not secured – particularly in the large states, a citizen may be tried for a crime committed in the state, and yet tried in some states 500 miles from the place where it was committed; but the jury trial is not secured at all in civil causes. Though

the convention have not established this trial, it is to be hoped that congress, in putting the new system into execution, will do it by a legislative act, in all cases in which it can be done with propriety. Whether the jury trial is not excluded [from] the supreme judicial court, is an important question. By Art. 3. Sect. 2. all cases affecting ambassadors, other public ministers, and consuls, and in those cases in which a state shall be party, the supreme court shall have jurisdiction. In all the other cases beforementioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exception, and under such regulations, as the congress shall make. By court is understood a court consisting of judges; and the idea of a jury is excluded. This court, or the judges, are to have jurisdiction on appeals, in all the cases enumerated, as to law and fact; the judges are to decide the law and try the fact, and the trial of the fact being assigned to the judges by the constitution, a jury for trying the fact is excluded; however, under the exceptions and powers to make regulations, congress may, perhaps introduce the jury, to try the fact in most necessary cases.

There can be but one supreme court in which the final jurisdiction will centre in all federal causes – except in cases where appeals by law shall not be allowed: The judicial powers of the federal courts extends in law and equity to certain cases: and, therefore, the powers to determine on the law, in equity, and as to the fact, all will centre in the supreme court: – These powers, which by this constitution are blended in the same hands, the same judges, are in Great-Britain deposited in different hands – to wit, the decision of the law in the law judges, the decision in equity in the chancellor, and the trial of the fact in the jury. It is a very dangerous thing to vest in the same judge power to decide on the law, and also general powers in equity; for if the law restrain him, he is only to step into his shoes of equity, and give what judgment his reason or opinion may dictate; we have no precedents in this country, as yet, to regulate the divisions in equity as in Great Britain; equity, therefore, in the supreme court for many years will be mere discretion. I confess in the constitution of this supreme court, as left by the constitution, I do not see a spark of freedom or a shadow of our own or the British common law.

This court is to have appellate jurisdiction in all the other cases before mentioned: Many sensible men suppose that cases before mentioned respect, as well the criminal cases as the civil ones, mentioned antecedently in the constitution, if so an appeal is allowed in criminal cases – contrary to the usual sense of law. How far it may be proper to admit a foreigner or the citizen of another state to bring actions against state governments, which have failed in performing so many promises made during the war, is doubtful: How far it may be proper so to humble a state, as to oblige it to answer to an individual in a court of law, is worthy of consideration; the states are now subject to no such actions; and this new jurisdiction will subject the states, and many defendants to actions, and processes, which were not in the contemplation of the parties, when the contract was made; all engagements existing between citizens of different states, citizens and foreigners, states and foreigners; and states and citizens of other states were made the parties contemplating the remedies then existing on the laws of the states – and the new remedy proposed to be given in the federal courts, can be founded on no principle whatever.

by Deliberator

"DELIBERATOR" appeared in The Freeman's Journal; or, The North-American Intelligencer, February 20, 1788.

6. Congress may, by imposing a duty on foreigners coming into the country, check the progress of its population. And after a few years they may prohibit altogether, not only the emigration of foreigners into our country, but also that of our own citizens to any other country.

Agrippa IX, 28 December 1787/1788

We come now to the second and last article of complaint against the present confederation, which is, that Congress has not the sole power to regulate the intercourse between us and foreigners. Such a power extends not only to war and peace, but to trade and naturalization. This last article ought never to be given them; for though most of the states may be willing for certain reasons **to receive foreigners as citizens**, yet reasons of equal weight may induce other states, differently circumstanced, to keep their blood pure. Pennsylvania has chosen to receive all that would come there. Let any indifferent person judge whether that state in point of morals, education, energy is equal to any of the eastern states; the small state of Rhode-Island only excepted. **Pennsylvania in the course of a century has acquired her present extent and population at the expense of religion and good morals. The eastern states have, by keeping separate from the foreign mixtures, acquired, their present greatness in the course of a century and an half, and have preserved their religion and morals. They have also preserved that manly virtue which is equally fitted for rendering them respectable in war, and industrious in peace.**

Our country is at present upon an average a thousand miles long from north to south, and eight hundred broad from the Mississippi to the Ocean. We have at least six millions of white inhabitants, and the annual increase is about two hundred and fifty thousand souls, **exclusive of emigrants from Europe**. The greater part of our increase is employed in settling the new lands, while the older settlements are entering largely into manufactures of various kinds. It is probable, that the extraordinary exertions of this state in the way of industry for the present year only, exceed in value five hundred thousand pounds. The new settlements, if all made in the same tract of country, would form a large state annually; and the time seems to be literally accomplished when a nation shall be born in a day. Such an immense country is not only capable of yielding all the produce of Europe, but actually does produce by far the greater part of the raw materials. The restrictions on our trade in Europe, necessarily oblige us to make use of those materials, and the high price of labour operates as an encouragement to mechanical improvements. In this way we daily make rapid advancements towards independence in resources as well as in empire. If we adopt the new system of government we shall by one rash vote lose the fruit of the toil and expense of thirteen years, at the time when the benefits of that toil and expense are rapidly increasing. Though the imposts of Congress on foreign trade may tend to encourage manufactures, the excise and dry tax will destroy all the beneficial effects of the impost, at the same time that they diminish our capital. Be careful then to give only a limited revenue, and the limited power of managing foreign concerns. Once surrender the rights of internal legislation and taxation, and instead of being respected abroad, foreigners will laugh at us, and posterity will lament our folly.

Agrippa. X, 1 January 1788

By adopting the form proposed by the convention, you will have the derision of foreigners (contemptuous ridicule or mockery), internal misery, and the anathemas (something or someone that one vehemently dislikes) of posterity.

Published in the Maryland Gazette and Baltimore Advertiser, March 7, 1788. The true identity of the author is unknown.

That a national government will add to the dignity and increase the splendor of the United States abroad, 14 can admit of no doubt: it is essentially requisite for both. That it will render government, and officers of 15 government, more dignified at home is equally certain. That these objects are more suited to the manners, 16 if not [the] genius and disposition of our people is, I fear, also true. That it is requisite in order to keep us at 17 peace among ourselves, is doubtful. That it is necessary, to prevent foreigners from dividing us, or 18 interfering in our government, I deny positively; and, after all, I have strong doubts whether all its 19 advantages are not more specious than solid.

The Constitutional Debates

Saturday, July 14.

In Convention. — Mr. L. MARTIN called for the question on the whole report, including the parts relating to the origination of money bills, and the equality of votes in the second branch.

Mr. GERRY wished, before the question should be put, that the attention of the House might be turned to the dangers apprehended from western states. He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will, if they acquire power, like all men, abuse it. They will oppress commerce, and drain our wealth into the western country. To guard against these consequences, he thought it necessary to limit the number of new states to be admitted into the Union, in such a manner that they should never be able to outnumber the Atlantic states. He accordingly moved, “that, in order to secure the liberties of the states already confederated, the number of representatives in the first branch, of the states which shall hereafter be established, shall never exceed in number the representatives from such of the states as shall accede to this Confederation. Mr. KING seconded the motion.

Mr. SHERMAN thought there was no probability that the number of future states would exceed that of the existing states. If the event should ever happen, it was too remote to be taken into consideration at this time. Besides, we are providing for our posterity, for our children and our grandchildren, who would be as likely to be citizens of new western states as of the old states. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

Mr. GERRY. If some of our children should remove, others will stay behind; and he thought incumbent on us to provide for their interests. There was a rage for emigration from the Eastern

States to the western country, and he did not wish those remaining behind to be at the mercy of the emigrants. Besides, foreigners are resorting to that country, and it is uncertain what turn things may take there.

Article 4, sect. 2, was then taken up.

Col. MASON was for opening a wide door for emigrants; but **did not choose to let foreigners and adventurers make laws for us and govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the representative.** This was the principal ground of his objection to so short a term. It might also happen, **that a rich foreign nation, for example, Great Britain, might send over her tools, who might bribe their way into the legislature for insidious purposes.** He moved that "seven" years, instead of "three," be inserted. Mr. GOUVERNEUR MORRIS seconded the motion; and on the question, all the states agreed to it, except Connecticut.

Mr. SHERMAN moved to strike out the word "resident" and insert "inhabitant," as less liable to misconstruction.

Mr. MADISON seconded the motion. Both were vague, but the latter least so in common acceptance, and would not exclude persons absent occasionally, for a considerable time, on public or private business. Great disputes had been raised in Virginia concerning the meaning of residence as a qualification of representatives, which were determined more according to the affection or dislike to the man in question than to any fixed interpretation of the word.

Mr. WILSON preferred "inhabitant."

Mr. GOUVERNEUR MORRIS was opposed to both, and for requiring nothing more than a freehold. He quoted great disputes in New York, occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely choose a non-resident. It is improper, as, in the first branch, the people at large, not the states, are represented.

Mr. RUTLEDGE urged and moved, that a residence of seven years should be required in the state wherein the member should be elected. An emigrant from New England to South Carolina or Georgia would know little of its affairs, and could not be supposed to acquire a thorough knowledge in less time.

Mr. READ reminded him that we were now forming a national government, and such a regulation would correspond little with the idea that we were one people.

Mr. WILSON enforced the same consideration.

Mr. MADISON suggested the case of new states in the west, which could have, perhaps, no representation on that plan.

Mr. MERCER. Such a regulation would present a greater alienship than existed under the old

federal system. It would interweave local prejudices and state distinctions in the very Constitution which is meant to cure them. He mentioned instances of violent disputes raised in Maryland concerning the term "residence."

Mr. ELLSWORTH thought seven years of residence was by far too long a term; but that some fixed term of previous residence would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.

Mr. DICKINSON proposed that it should read "inhabitant actually resident for — years." This would render the meaning less indeterminate.

Mr. WILSON. If a short term should be inserted in the blank, so strict an expression might be construed to exclude the members of the legislature, who could not be said to be actual residents in their states, whilst at the seat of the general government.

Mr. MERCER. It would certainly exclude men, who had once been inhabitants, and returning from residence elsewhere to resettle in their original state, although a want of the necessary knowledge could not in such cases be presumed.

Mr. MASON thought seven years too long, but would never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan, that the representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, rich men of neighboring states may employ with success the means of corruption in some particular district, and thereby get into the public councils after having failed in their own states. This is the practice in the boroughs of England.

On the question for postponing, in order to consider Mr. Dickinson's motion, —

Article 5, sect. 3, was then taken up.

Mr. GOUVERNEUR MORRIS moved to insert fourteen instead of four years' citizenship, as a qualification for senators; urging the danger of admitting strangers into our public councils.

Mr. PINCKNEY seconded him.

Mr. ELLSWORTH was opposed to the motion, as discouraging meritorious aliens from emigrating to this country.

Mr. PINCKNEY. As the Senate is to have the power of making treaties and managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject, who made it death for any stranger to intrude his voice into their legislative proceedings.

Col. MASON highly approved of the policy of the motion. Were it not that many, not natives of

this country, had acquired great credit during the revolution, he should be for restraining the eligibility into the Senate to natives.

Mr. MADISON was not averse to some restrictions on this subject, but could never agree to the proposed amendment. He thought any restriction, however, in the Constitution, unnecessary and improper: – unnecessary, because the national legislature is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence, as conditions of enjoying different privileges of citizenship; – improper, because it will give a tincture of illiberality to the Constitution; because it will put it out of the power of the national legislature, even by special acts of naturalization, to confer the full rank of citizens on meritorious strangers; and because it will discourage the most desirable class of people from emigrating to the United States. Should the proposed Constitution have the intended effect of giving stability and reputation to our government, great numbers of respectable Europeans, men who love liberty, and wish to partake its blessings, will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations, though they should not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the state legislatures, if they were left at liberty to do so: nor that foreign powers would make use of strangers, as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy and watchfulness in the public.

Mr. BUTLER was decidedly opposed to the admission of foreigners without a long residence in the country. They bring with them, not only attachments to other countries, but ideas of government so distinct from ours, that in every point of view they are dangerous. He acknowledged that, if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments, would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Dr. FRANKLIN was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this country. Even in the country with which we have been lately at war, we have now, and had during the war, a great many friends, not only among the people at large, but in both Houses of Parliament. In every other country in Europe, all the people are our friends. We found in the course of the revolution that many strangers served us faithfully, and that many natives took part against their country. When foreigners, after looking about for some other country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence and affection.

Mr. RANDOLPH did not know but it might be problematical whether emigrations to this country were, on the whole, useful or not, but he could never agree to the motion for disabling them, for fourteen years, to participate in the public honors. He reminded the Convention of the language held by our patriots during the revolution, and the principles laid down in all our American constitutions. Many foreigners may have fixed their fortunes among us, under the faith of these invitations. All persons under this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed system.

He would go as far as seven years, but no farther.

Mr. WILSON said, he rose with feelings which were perhaps peculiar; mentioning the circumstance of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the system, and the effect which a good system would have in inviting meritorious foreigners among us, and the discouragement and mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland, he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire, and would not have accepted, the offices to which they related. To be appointed to a place may be matter of indifference. To be incapable of being appointed is a circumstance grating and mortifying.

Mr. GOUVERNEUR MORRIS. The lesson we are taught is, that we should be governed as much by our reason, and as little by our feelings, as possible. What is the language of reason on this subject? That we should not be polite at the expense of prudence. There was a moderation in all things. It is said that some tribes of Indians carried their hospitality so far as to offer to strangers their wives and daughters. Was this a proper model for us? He would admit them to his house, he would invite them to his table, would provide for them comfortable lodgings, but would not carry the complaisance so far as to bed them with his wife. He would let them worship at the same altar, but did not choose to make priests of them. **He ran over the privileges which emigrants would enjoy among us**, though they should be deprived of that of being eligible to the great offices of government; observing that they exceeded the privileges allowed to foreigners in any part of the world; and that as every society, from a great nation down to a club, had the right of declaring the conditions on which new members should be admitted, there could be no room for complaint. As to those philosophical gentlemen, those citizens of the world, as they called themselves, he owned, he did not wish to see any of them in our public councils. He would not trust them. The men who can shake off their attachments to their own country can never love any other. These attachments are the wholesome prejudices which uphold all governments. Admit a Frenchman into your Senate, and he will study to increase the commerce of France: an Englishman, and he will feel an equal bias in favor of that of England. It has been said that the legislatures will not choose foreigners, at least improper ones. There was no knowing what legislatures would do. Some appointments made by them proved that every thing ought to be apprehended from the cabals practised on such occasions. He mentioned the case of a foreigner who left this state in disgrace, and worked himself into an appointment from another to Congress.