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ECONOMIC FACTORS IN THE DRAFTING OF THE FEDERAL CONSTITUTION

Leo J. Wearing*

THE CALLING OF THE CONVENTION

The three principal economic factors which led to the calling of the Philadelphia Convention of 1787 are usually said to be the desire to put the central government on a sound financial basis, the need for national commercial regulations, especially against England and the conflicting state interests, and the necessity of protecting property rights from the attacks of the debtor classes.

The first of these points was in a sense connected with the third, since the establishment of government credit meant incidentally protection for holders of government securities. There was, as Patrick Henry said in the Virginia Convention, not only a struggle for empire, but also a struggle for money. Professor Beard estimates that at least five-sixths of the members of the Federal Convention were government security holders. This does not necessarily imply that the constitutional fathers were a gang of grafters, even though Hamilton's financial policy later gave real substance to the public securities, which according to James Wilson were melting "in the hands of the holders like snow before the sun." Although naturally influenced by the interest of their particular class, they were probably for the most part, as Robert Morris said, plain honest men.

Government finance was even more closely tied-up with the regulation of commerce, since government credit depended upon commercial prosperity and could be used to promote commercial prosperity. Commerce and finance, in fact, were usually mentioned together. Commerce at that time, it must be remembered, comprised practically "all activities

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2 Charles A. Beard, An Economic Interpretation of the Constitution of the United States (New York, 1929), 149 (hereafter cited as Beard).

3 Debates, II, 431.
directly affecting the wealth of the nation," including the development of manufactures, of agriculture and of the West.

It is possible, then, to reduce the economic factors behind the Constitutional Convention to two: the need for the regulation of commerce and the need for the protection of property rights. Which of these factors was dominant? Was the convention called to meet at Philadelphia primarily to promote the economic welfare of the nation or to protect vested creditor interests?

There is some evidence to support the latter view. Both Washington and Madison, for instance, made rather strong statements at the opening of the Federal Convention. The Washington statement is indirect and consequently less important than the other. It will be considered first.

Writing to Jefferson toward the end of May, 1787, Washington said that the government was "shaken of its foundation" and that unless a remedy was soon found "anarchy and confusion" would inevitably follow. One almost immediately associates the idea of anarchy with Shays' Rebellion. But was this necessarily Washington's meaning? More than a year before he had declared the country was in a "delicate situation." He could not have been referring to Shays' Rebellion here; or even to other threats to property, for a few months later he said that the internal governments were daily acquiring strength and that justice was well administered.

In view of the strong impression which Shays' Rebellion made on him, it is possible that his Jefferson letter did refer to that incident. It is more likely, though, that it referred rather to the whole impossible economic and political situation of the country. He seems to have lost interest in the Massachusetts insurrection after the close of February, 1787. His correspondence is proof of this. Moreover, when first elected to the Constitutional Convention he declined, on the ground that he had previously asked to be excused from attending a Cincinnati Convention, which was scheduled for the same time and place as the Federal Convention. It was not until assured by Knox that his attendance would make him doubly the Father of his Country that he finally came around. If the threat to property rights had been still critical, it is probable that a man of Washington's character would have taken a much bolder stand.

The Madison statement is much more pointed. In the early days of the Philadelphia meeting, he said that interference with private rights

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7 Ibid. XI, 121-23, 128-30.
“had perhaps more than anything else produced this Convention.” No doubt this represented Madison’s real view, since numerous letters of his, although not so direct, are of the same general character. It must be noted, however, that his statement is qualified by the word “perhaps.”

Nor is it entirely consistent with his earlier correspondence and conduct. He had staged a fight against paper money in Virginia. But his letters written at the time of Shays’ Rebellion betrayed much more agitation over the proposed surrender of the Mississippi than over the situation in Massachusetts. When he learned that his friend Henry Lee favored the Mississippi project, he ran against Lee in the next Congressional election and defeated him.

In August of 1785 he was worried about Great Britain’s “machinations” and the antifederal expedients which might result. If the defects of the Confederation were not remedied, he was fearful of its complete destruction. “In fact,” he wrote Jefferson in the spring of 1786, “most of our political evils may be traced up to our commercial ones, as most of our moral may to our political.”

Madison was by no means the only one to comment on the critical situation of the Confederation in the period before Shays’ Rebellion. The idea seems to have been commonly accepted. Only a few opinions can be cited here.

In an address to Governor Bowdoin, in July, 1785, the selectmen of Newburyport said: “The critical state of our commerce and the weight of the public debt that presses us demand the strictest attention to every commercial and economical situation.”

Early in 1786 a Congressional committee reported that the people must make up their minds to give the government adequate financial support or hazard the very existence of the union. Henry Lee, serving in Congress at the time, wrote that the death of the federal government could not be far distant unless the states immediately exerted themselves and paid their quotas.

Just a year before he crushed Shays’ forces at Petersham, Lincoln wrote Rufus King a rather interesting letter. According to Lincoln it was Massachusetts’ interest to be the carriers of her neighbors’ produce

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8 Records of the Federal Convention, I, 134.
9 The Writings of James Madison, ed. by Gaillard Hunt (New York, 1910), II, 158 (hereafter cited as Writings of Madison).
11 Journals of Congress: Containing Their Proceedings from November 6, 1786 to November 5, 1787 (Philadelphia, 1801.), IV, 620.
12 Correspondence of the American Revolution, being Letters of Eminent Men to George Washington, ed. by Jared Sparks (Boston, 1853), IV, 126.
as well as her own; only in this way could she secure means of remittance for her purchases; Massachusetts would for this reason favor Congressional regulation of trade. The failure of this and the aversion, in some states, to settle the debts of the United States would, in the opinion of many, cause the foundations of the Confederation to be undermined.\textsuperscript{15}

In June, 1786, Governor Bowdoin was ready to agree with Gorham that unless the states met their requisitions the federal government would cease to exist.\textsuperscript{16}

During the early part of 1786 there seems to have been more alarm over federal finance than anything else. This shows that government security holdings were low because of the commercial depression, before the attack on property rights became much of a factor.\textsuperscript{17} The demand for financial reform meant, consequently, a scheme of promoting securities rather than a means of warding off an attack on property rights. And such promotion was closely tied up with commercial promotion, since commerce and finance were mutually helpful.

Nor must it be forgotten that the Philadelphia Convention grew out of two conventions having to do with commerce. The second of these, the Annapolis Convention, was intended as a stepping stone in the direction of a thorough-going revision of the Articles—and this before Shays' Rebellion became acute.\textsuperscript{18}

John Dickinson summed up the situation back as far as 1783. He thought that further power ought to be given to Congress to regulate and protect commerce, to raise revenues by import duties, and to terminate dissensions within the states. Of these three the first was the one which many persons were "most earnest to have lodged in Congress without control."\textsuperscript{19}

It has been said that the attack on property rights, especially Shays' Rebellion, gave the final impetus to the movement for the Constitutional Convention by winning over the hesitant New England States. There is some evidence in support of this contention.

About the time when the Shaysites were first becoming really formidable, Stephen Higginson of Massachusetts wrote General Knox that he never saw so great a change of attitude in his state as to the necessity for increasing Congress's power, not only in regard to com-

\textsuperscript{15} The Life and Correspondence of Rufus King, ed. by Charles R. King (New York, 1894), I, 156-60 (hereafter cited as Correspondence of Rufus King).
\textsuperscript{17} Government securities were actually lower in July, 1786, than during the fall of the same year. See Pa. Packet, July 31, Aug. 5, Aug. 17, Aug. 19, Sept. 1, October 4 and Dec. 22, 1786.
\textsuperscript{18} Warren, Making of the Constitution, 22-23.
\textsuperscript{19} "Thomson Papers" in Collections of the N.Y. Hist. Soc., Third Series, XI (1878), 71.
merce but generally. Two months later Humphreys sent Washington a somewhat similar message. He said that King, Sedgwick and several other gentlemen who had been mortally opposed to the Cincinnati, were now looking to that quarter for political protection.

The actual facts are somewhat at variance with these statements. If Shays' Rebellion was as influential as supposed, it is difficult to explain why the New England States delayed so long their approval of the Federal Convention. Massachusetts reached her decision on February 22, 1787; Connecticut chose no delegates until May; New Hampshire waited until June for her election. Rhode Island, of course, sent no delegates at all.

Rufus King may have turned to the Cincinnati for protection as early as January 20, 1787, as Humphreys thought. But so far as his correspondence shows he did not begin to regard the Constitutional Convention with favor until more than a week after the battle of Petersham. Even then he was not too sure of its legality.

By this time, Higginson was ready to admit that he was wrong about Massachusetts' conversion to federalism. He told Knox that the state had been favorable to the convention the previous year, but that the sentiments expressed by King and Dane before the legislature had made a great change in the minds of the members. Higginson was here referring to the fact that, when Annapolis report was before Congress in the fall of 1786, both King and Dane appeared before the Massachusetts legislature in an effort to convince it that Congress was the proper body to propose amendments to the Articles.

Higginson was undoubtedly right about Massachusetts' being originally in favor of the convention. In fact, the legislature itself had in 1785 proposed the calling of a convention to amend the Articles of Confederation, but the Massachusetts delegates—Gerry, Holten and King—had failed to report it to Congress. In explanation of their action the delegates pointed out to Bowdoin that it would suffice to give Congress the power to regulate trade for fifteen years. Anything more than this would be dangerous, since it would be impossible to change, if experience proved that they had gone in the wrong direction. The convention method was illegal, according to the report, and might lead to a complete revision of the Articles. Finally, there was fear of

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20 Warren, Making of the Constitution, 32-33, note.
21 Frank L. Humphreys, Life and Times of David Humphreys (New York, 1917), I, 393-98.
24 Ibid., VIII, 38-39.
aristocratic government; the Cincinnati already tended in that direction.\textsuperscript{25}

When Massachusetts turned back again toward federalism in February, 1787, the explanation given by William Irvine to James Wilson was that the New England delegates were still really antifederal but voted for the Convention in Congress because they saw it would succeed without them.\textsuperscript{26} Since seven states were already favorable to the Convention,\textsuperscript{27} Irvine may have been right. Another possible explanation is that Massachusetts was converted because King and Dane were converted. It was they who drew up the resolution adopted by Congress calling for the Philadelphia Convention.

The motives which actuated these two men are somewhat problematical. But the evidence seems to indicate that both were inspired by interest in federal finance and western lands.

King was one of those who took the financial crisis of 1786 quite seriously. Unlike most of the others he stressed its effect upon his own personal affairs. In April of 1786 he told Gerry that he had not received his salary. "I can support myself," he went on, "and freely would do it, if I can serve my country. But if a dissolution must come...it behoves every one to withdraw in season to effect, if possible, some sort of personal security."\textsuperscript{28} King, it is interesting to note, was a holder of government securities.\textsuperscript{29}

A little more than a month later we find him writing to Gerry again—this time on the Mississippi question. The interests of the people west of the mountains were so different from those of the east, he believed, that if the Mississippi was immediately opened to commerce they would separate from the union. In this case, the United States would get no money for the domestic debt. On the other hand the Spanish treaty would encourage foreign trade, tie the East and West together by internal commerce, and by reducing the price of land, would lead to settlement.\textsuperscript{30}

In April, 1787, King opposed an attempt of Madison to secure the adoption of a resolution by Congress to the effect that a vote of seven states did not authorize a suspension of the use of the Mississippi. He was able to prevent Madison's resolution from coming to a vote.\textsuperscript{31}

About the time that King was making up his mind that perhaps the convention idea was not so bad after all, the leaders of the Ohio Company were advertising a meeting to be held in Boston. At the meet-

\textsuperscript{25} Correspondence of Rufus King, I, 60-66.
\textsuperscript{26} Burnett, 40.
\textsuperscript{27} Writings of Madison, II, 311.
\textsuperscript{28} Correspondence of Rufus King, I, 133-35.
\textsuperscript{29} Beard, 125.
\textsuperscript{30} Correspondence of Rufus King, I, 175-79.
\textsuperscript{31} Debates, V, 103-104.
ing, March 8, 1787, 250 shares of stock were subscribed at a thousand dollars a share. A share could be purchased for ten dollars in cash or for a thousand dollars in government securities. It was found that many people of Massachusetts, Connecticut, Rhode Island and New Hampshire were interested in taking stock but held back because of the uncertainty of securing a large enough tract of ground for a great settlement. For that reason Samuel H. Parsons, Rufus Putnam and the Reverend Manasseh Cutler were chosen directors to apply to Congress for a private purchase of land.32

Cutler seems to have been the moving spirit in the enterprise. One of the first men to whom he wrote was Nathan Dane, colleague of Rufus King. In a letter to Dane, March 16, 1787, Cutler expressed a hope that, notwithstanding the land ordinance, Congress would make a private sale to the Ohio Company at fifty cents an acre—a price at which many of the states sold land. He admitted that the federal land was better, but thought that the danger of Indian wars was a factor in determining the price.33

By personal contacts with members of Congress and the members of the Constitutional Convention and by making use of the instrumentality of Dane, Cutler was able to get his deal through Congress in July, although the price was somewhat higher than he anticipated. The following month Edward Carrington of Virginia wrote Monroe that they had at last made a break into the western lands. “This Company,” he told Monroe, “is formed of the best men in Connecticut and Massachusetts.”34

A year later the Massachusetts delegates, Dane and Otis, congratulated themselves that the lands owned by Congress might be used as a sure means of sinking a large part of the domestic debt of the United States. They pointed out that about nine million acres were already disposed of and that applications for the purchase of three million more had been made.35

No attempt has here been made to treat adequately the influence of the western land question on the making of the Constitution. That would require a separate study. The author has merely tried to show that federal finance and western lands were a factor in winning New England support for the Constitutional Convention. Even for this purpose the evidence presented is not conclusive. But the author feels that it offers a better explanation for the changing attitude of New England than Shays' Rebellion. It is not contended that the latter was

32 W. P. Cutler and J. P. Cutler, Life and Journals and Correspondence of Rev. Manasseh Cutler (Cincinnati, 1888), I, 191.
33 Ibid., I, 194-5.
34 Burnett, VIII, 631.
35 Ibid., VIII, 739.
not of some influence. But it is the author's opinion that commerce, taken as including federal finance and western development, was the principal force behind the Federal Convention.

**Commerce in the Convention**

So much has already been written about the commerce power of Congress that a complete treatment of the subject in these pages is hardly necessary. Yet there are certain phases of the subject which must be considered here—some in general terms, others in more detail.

The members of the Convention almost unanimously agreed, as will be shown later, on the necessity of protecting private property. But at the opening of the Convention they were even more unanimously of the opinion that commerce ought to be regulated. All three plans of government introduced provided for commercial regulation. Only the Virginia plan provided for protection of property rights. Madison criticized the Paterson plan for this very reason. When Sherman enumerated the various powers which Congress ought to have, including among them commercial regulation, Madison again raised the objection that Sherman had failed to mention the protection of property rights. These facts prove Madison's attachment to private rights, but they indicate at the same time that other members were also interested in something else.

**The Commerce Clause**

The Convention compressed the power of Congress over commerce into a single clause: "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes." But they meant by this clause most of what it means today and in one respect more. The courts have actually limited the commerce power on the theory of states' rights, whereas the founding fathers meant for the national government to be absolutely sovereign in the field of foreign and interstate commerce.

In his introductory speech at the opening of the Convention, Randolph declared that among the powers Congress should have was the "counteracting of the commercial regulations of other nations and the pushing of commerce ad libitum." The latter included the "establishment of great national works—the improvement of inland navigation—agriculture—manufactures—a freer intercourse among the citizens."

Randolph's view was the one commonly held. Gouverneur Morris, Madison and Fitzsimmons believed that Congress should have the right

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36 Records of Fed. Conv., I, 3 and 7 ff.
38 Hamilton and Adair, 112-13.
to tax exports to encourage manufactures. Morris looked into the future and saw the arrival of a time when manufactures would require raw materials. Madison thought the delegates ought to be governed by national and permanent views.39

Nor did the delegates stop at the promotion of manufactures. Charles Pinckney wanted Congress to promote agriculture, commerce, trades and manufactures. Gouverneur Morris proposed the establishment of a department of domestic affairs to supervise agriculture, manufactures, the development of roads and navigation, and the encouragement of interstate commerce.40

Madison even favored the granting of charters to corporations. His proposition was voted down. But Wilson insisted that the power was implied in the commerce clause in any case. George Mason thought Wilson was wrong. When, however, he drew up his list of objections to the Constitution, the right to grant monopolies was among them.41

The constitutional fathers thus gave to the commerce power a much more liberal interpretation than the Supreme Court in recent times has been wont to do. It was not merely negative in internal affairs, as has sometimes been said, but positive as well. It looked to the future as well as to the present. It was reduced to a single clause in the interest of simplicity, not to limit the power of Congress.

THE COMPROMISE

Of the three compromises made during the course of the Convention's work, the one in regard to counting three-fifths of the slaves both for taxation and representation, was meant to protect a peculiar species of property. The other two had to do with commerce.

Almost to the close of the Convention, a two-thirds vote was necessary to regulate commerce. This was to prevent the northern states from monopolizing the trade of the South as England had done. The small states without commercial centers wanted majority control of trade to protect them from their powerful neighbors. When a proposal was made to tax or to prohibit the importation of slaves, South Carolina and Georgia combined with the small states to effect a compromise. The agreement was that Congress might regulate commerce by a simple majority vote, but the import tax on slaves was not to exceed ten dollars a head and importation was not to be prohibited before 1808. Later as a concession to Southern interests a prohibition against taxing exports was added.42

The really important compromise was that between the large and

39 Ibid., 124-25.
40 Ibid., 116-17.
41 Ibid., 117-18.
42 Records of the Federal Convention, III, 334-35; 367; 436; Hamilton and Adair, 125.
small states, which resulted in proportionate representation in the House and equal representation in the Senate. This was the Great Compromise—great in the sense that three weeks of discussion were required to arrive at a decision which prevented an actual break-up of the Convention. Oddly enough few writers have ever stressed the economic factors in the background.43

COMMERCE AND THE GREAT COMPROMISE

It has been customary, rather, to picture the struggle leading up to the Compromise as a contest between little men of narrow views and big men of broad national outlook. It is possibly true that the small-state men did not measure up to the large-state delegates in statesmanship, although Paterson and Dickinson were possessed of more than average ability. On the other hand, Professor Beard has shown that they were of approximately the same social standing as the large-state men, and that, with the possible exception of the New York and Delaware representatives, they had the same economic motives for wanting a strong national government as did the other members of the Convention.44

As to the claim that the small states were naturally more in favor of states' rights, both common sense and considerable opinion in the Convention point to the fact that they really had greater reason to support a national government precisely because they were small states. It is interesting to note in this connection that New Jersey and Maryland were the last two states to ratify the Articles of Confederation, and the reason was that that instrument did not give Congress sufficient power. Both states insisted that the national government have jurisdiction over the western lands, and New Jersey favored making regulation of trade a Congressional prerogative.45 These two little states may be accused of selfishness possibly, but hardly of standing for a states' rights' view. It is worthy to note also that when the northern states voted to give Jay the right to surrender the navigation of the Mississippi for a period of years, New Jersey refused to support them. According to Madison, New Jersey feared that the surrender of the river would mean increased taxes to the central government.46

The contest in the Convention showed similar economic forces at work, although they were not always apparent. On May 30, in committee of the whole, a motion was passed to the effect “that a national government ought to be established, consisting of a supreme legislative, executive and judiciary.” Delaware voted with the large states in favor

44 Beard, 170.
45 The Records of the Federal Convention, Farrant, I, 250.
46 Debates, III, 346.
of this proposition, Connecticut was opposed, New York divided, and New Jersey and Maryland not yet represented. During the next two weeks a large part of the Virginia plan was adopted in committee of the whole with only moderate opposition. The real struggle started when motions were passed for proportionate representation in both houses. The second of the two propositions, providing for proportionate representation in Senate, was carried by a vote of six to five, with Connecticut, New York, New Jersey, Delaware and Maryland in opposition. Four days later Paterson introduced the New Jersey plan, which he said was "purely federal" in its principles.

The real economic motives behind the small-state men had been hinted at vaguely by Franklin, who said:

"The greater states, Sir, are naturally as unwilling to have their property left in the disposition of the smaller states as the smaller are to have theirs in the disposition of the greater." These motives were to become clearer later.

Meanwhile the Convention—or at least some of its members—let itself be deceived into thinking that there was question of adopting a national government or of revising the Articles. As a matter of fact both plans were largely national. Madison, comparing the two, said:

"One characteristic was that in a federal government the power was exercised not on the people individually, but on the people collectively as states. Yet in some instances as in piracies, captures, etc., the existing confederacy, and in many instances, the amendments proposed to it by Mr. Paterson must operate on individuals."

Perhaps the main difference between the two plans after all was that one provided for a legal if impossible method of ratification, while the other was revolutionary in this respect. An examination of the two plans does not reveal such great differences as are generally imagined to exist.

In the first place, both plans provided for three distinct departments of government. There was to be only a one-house Congress under the New Jersey plan, but most national states today have one-house parliaments in actual practice. Equal representation in the New Jersey plan was unfair, but not necessarily opposed to the idea of national government. Both plans provided for an executive to be elected by Congress, which would have meant something like the English cabinet system.

47 Farrant, 73.
49 Andrew C. McLaughlin, The Confederation and the Constitution, (New York, 1905), 212.
50 Records of Federal Convention of 1787, I, 196.
51 Ibid., I, 314.
52 Farrant, 225-32.
As far as the judiciary was concerned, the Virginia plan was somewhat more national because it provided for a system of national courts, while the New Jersey plan would have set up only a supreme court. The latter plan, however, practically made federal courts of the state courts by providing that the national laws and treaties were the supreme law of the states, enforceable in the state courts even though contrary to their own state constitutions. The judicial system as finally adopted was not necessarily so different from this. In the Virginia Convention there was serious talk of Congress' conferring federal jurisdiction on the state courts instead of creating inferior courts. Patrick Henry expressed himself as being much disturbed at such a proposal because of its tendency to destroy the effectiveness of the state courts as guardians of states' rights.

In providing for coercion the New Jersey plan was really more national in a way than the other, since it authorized calling forth the militia against individuals as well as against states. The Virginia plan originally provided only for the coercion of states.

The Congress in the large state scheme was to have the legislative powers enjoyed under the Articles and the right "to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation." This, of course, went much beyond the New Jersey plan, but it is significant that the latter added the only two powers really lacking under the Articles—the power to raise revenue and the power to regulate commerce. Hence it was probably closer in this respect to our present Constitution than the Virginia plan. Paterson's scheme retained the partial use of requisitions, but the Revolution was fought—ideologically at least—for the requisition system. Both Mason of Virginia and Smith of New York in their opposition to the Constitution held that it was impossible for the people to be adequately represented in Congress and hence that it ought not to have the right to levy direct taxes.

The only important difference between the two plans, aside from the method of ratification, was the question of equal or proportionate representation. This was realized fairly well in the Convention. Madison said that "the great difficulty lies in the affair of representation; and if this could be adjusted, all others would be surmountable." Sherman agreed essentially with this idea.

53 Ibid., 225-32.
54 Debates, III, 539.
55 Farrant, 225-32.
56 Ibid., 225-32.
57 Debates, II and III.
"You see the consequences of pushing things too far. Some of the members from the small states wish for two branches in the general legislature, and are friends to a good national government; but we would sooner submit to a foreign power than submit to be deprived of an equality in both branches of the legislature, and thereby be thrown under the domination of the large states."59

Pinckney was of the opinion that "the whole comes to this. Give New Jersey an equal vote, and she will dismiss her scruples, and concur in the national system."60

The small states' spokesmen voiced the economic fears behind their desire for equality vigorously if not always clearly. "Is there no difference of interests," asked Bedford, "no rivalry of commerce, of manufactures? Will not the large states crush the small ones whenever they stand in the way of their acquisitions?"61 More to the point, perhaps, was this question of Ellsworth:

"Suppose that in pursuance of some commercial treaty or arrangement, three or four free ports and no more were to be established, would not combinations be formed in favor of Boston, Philadelphia, and some port on Chesapeake?"62

In reply Hamilton said that "the only considerable distinction of interests lay between the carrying and non-carrying states, which divide instead of unite the largest states." But both Franklin and Madison admitted that there was probably something to the claim of the small states.63 Charles Pinckney went further. He said that the large states might secure a preference in appointments and "that they might also find some common points in their commercial interest favorable to them."64

To what extent the small states were justified in their fears it is of course impossible to say. This much, however, is clear: that the small states outside of New York and Maryland—and of course Rhode Island, which was not a factor in the Convention—were for the most part both non-importing and non-carrying states. Madison testified that the non-carrying states included not only the Southern states, but New Jersey, Delaware, Connecticut, and a great part of New Hampshire.65 Hamilton said that Connecticut and New Jersey were the least maritime of all the states, but that they might develop a carrying trade if imposts should prove inconvenient.66 Ellsworth claimed that New

59 Note, \textit{Writings of Madison}, III, 166.
60 \textit{Ibid.}, III, 179.
62 \textit{Ibid.}, I, 482.
64 \textit{Ibid.}, 492-93.
65 \textit{Debates}, III, 312.
York raised by impost between sixty and eighty thousand pounds sterling, of which Connecticut paid a third, and if she transferred the business to Massachusetts she would have a similar bill to pay.67

Nor was there question of imports only. According to Madison, Virginia exported the produce of North Carolina; Pennsylvania that of New Jersey and Delaware; and Rhode Island that of Connecticut and Massachusetts.68 It is significant that New Hampshire, New Jersey and Delaware voted to tax exports in order to give Congress control over them.69

Another question, which influenced Maryland at least, was the establishment of favored ports. Martin testified that his delegation had secured the clause to the effect that no preference should be given to the ports of one state over those of another in order to prevent Norfolk's being made a favorite port at the expense of Maryland.70

Whether or not the commercial fears of the small states were well founded, they evidently considered equality in the Senate sufficient protection. This gained, they ceased their opposition both in the National Convention and in the state conventions. Delaware, New Jersey and Georgia—which shifted to the small state column when it came to a showdown—ratified unanimously. There was little opposition in Connecticut or even in Maryland and New Hampshire. New York and Rhode Island were the only so-called small states to put up a fight against ratification. All of this shows pretty clearly that they had never opposed the Constitution. The real reason for their support of the New Jersey plan was the desire for economic independence from their stronger neighbors. The Great Compromise guaranteed them this.

**Property Rights in the Convention**

Although the Constitution was not made primarily for the protection of property rights, it is undoubtedly true that property rights played a large part in the construction of the machinery of the federal government. Partly for this reason and partly because, to the author's knowledge, no systematic study has ever been made on the subject, it will be considered here in some detail.

It is easy to exaggerate the influence of property rights even in the case of governmental machinery. The various departments were often formed to promote commerce almost as much as for the other purpose. Besides, we must remember the theory followed was that the government should be organized on the check and balance system, to represent all classes.

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67 *Debates*, II, 189.
The aristocratic Hamilton perhaps best gave expression to this theory. There was, he said, in every community a division into the few and the many. If all the power was given to the many, they would oppress the few. A transfer of the power would lead to oppression in the opposite direction. "Both therefore ought to have power that each may defend itself against the other. To the want of this check we owe our paper money—installment laws, etc."  

Hamilton's last sentence struck the keynote for the Convention's work. Government representing all might be the theory. Checks on too much democracy was to be the practice. Some concessions were made to the theory, though. This was especially true in providing for the House of Representatives.

**THE HOUSE**

The Randolph resolutions, or Virginia plan, provided for a lower house to be elected by the people. This subject came up for consideration in the committee of the whole on May 31. Gerry and Sherman immediately rose in opposition to election by the people. Mason, Wilson, and Randolph, however, were favorable. Wilson favored a high pyramid with a broad base, to secure the confidence of the people. He said that opposition to federal measures proceeded from state officeholders rather than from the people.  

The Randolph proposition was temporarily adopted, with only New Jersey and South Carolina voting in the negative. A week later Charles Pinckney moved to substitute election by the state legislature on the ground that the people were poor judges of such matters. Gerry and Sherman supported Pinckney. Gerry opposed too much democracy. George Mason took the opposite view. The legislatures had issued paper money he said, not the people.  

Despite the arguments of Pinckney and Gerry, the popular idea carried the day and Pinckney's motion was voted down with only three states dissenting. Even Hamilton took a democratic stand on this issue. He declared himself to be a friend of vigorous government, but he held, at the same time, that the popular branch should be on a broad foundation. Otherwise the people would be warranted in being jealous of their liberties.  

This, though, is not the whole story. The decision had been made for popular election; the question who were the people for purposes of election remained to be settled. The Randolph resolutions indicated

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72 Ibid., I, 20, 48.
73 Ibid., I, 48, 132.
74 Ibid., I, 132; II, 553.
that the voters should have certain qualifications but laid down no specific requirement.\footnote{Ibid., I, 20.}

Toward the end of July this problem was turned over to the Committee of Detail for solution. James Wilson as Committee Chairman made three different attempts to find a solution. His first plan provided that House electors were to be freemen twenty-one years old and owning freehold estates of fifty acres. The second plan stated that the state legislatures might prescribe the qualifications of the electors, with the United States reserving the right to alter or suspend such qualifications at any time. The third plan required the electors to have the same qualifications as the electors of the more numerous branch of the state legislatures.\footnote{Ibid., II, 151, 153, 163.}

When Wilson's third plan was reported to the Convention on August 7, quite a discussion arose. Gouverneur Morris moved to substitute some plan that would reserve the right of suffrage to the freeholders. The motion was seconded by Fitzsimmons of Pennsylvania. Wilson in defense said that the report was well considered—that it was difficult to formulate any uniform rule for all of the states. Moreover, he added it would be disagreeable for a person to vote for the state legislature and be excluded from voting for the national legislature.\footnote{Ibid., II, 201.}

Mason supported Wilson very ably. He pointed out that several states had extended the franchise beyond the freeholders and that the people would object to disfranchisement. Later in the course of the debate he added that "Every man having evidence of attachment to and permanent common interest with society ought to share in all its rights and privileges." He doubted whether property was the only mark of permanent attachment.\footnote{Ibid., II, 212, 203.}

Franklin came out against all qualifications. The common people were the ones to be trusted in his view. Ellsworth thought that the tax-payers should have the vote. Gorham believed that the elections in Philadelphia, New York and Boston, where the mechanics could vote, were at least as good as those conducted by freeholders only.\footnote{Ibid., II, 202, 205, 215.}

Perhaps more speakers backed Morris. Dickinson held that the restriction of the suffrage to the freeholders was "a necessary defense against the dangerous influence of those multitudes without property and without principle, with which our country like all others, will in time abound." Viewing the matter abstractly, Madison thought that
Dickinson was perfectly right. However, he was willing to accept the Wilson report as a practical solution.\textsuperscript{80}

The Morris motion was voted down and the next day the Wilson report was unanimously approved.\textsuperscript{81} It has been repeatedly said by historians that the Convention's decision was influenced by the fact that all of the states had voting qualifications. This inference seems logical enough. But there is no direct evidence in the debates to support it. The need for some practical solution and the fear of antagonizing the people seem to have been the decisive points.

The Committee of Detail also reported a provision to the effect that the national legislature should establish property qualifications for its own members. Charles Pinckney undertook to criticize this provision. He said if he were to fix the amount of property which office-holders should have, he should not consider less than a hundred thousand dollars for the President, half of that for each of the judges and a proportionate sum for the members of the national legislature. He moved that each of these office-holders should be required to swear that they had unencumbered estates. The motion was seconded by Rutledge, who explained that the committee had been unable to agree on qualifications and wanted to avoid displeasing the people.\textsuperscript{82}

There was not much of a debate in this case. Franklin again came out against all qualifications. Madison thought that if there were to be qualifications at all they should be fixed in the Constitution. Otherwise the national legislature might gradually subvert the Constitution. Wilson finally came to the conclusion that it was better to drop the committee's clause altogether for the reason that it would constructively deprive the national legislature of the right of making all other regulatory qualifications.\textsuperscript{83}

Wilson's suggestion was followed and the committee's provision was rejected. On the basis of Wilson's opinion this action might be interpreted as expressing the desire of the Convention to give Congress implied power to lay down property qualifications of its own. It is doubtful, though, whether many members were so federalist in their views. As a matter of fact, Pinckney's motion was at the same time rejected by so decisive a vote that no roll was called.\textsuperscript{84} This would indicate that, in the mind of the Convention, Congress was not to represent creditors only.

The term of the members of the House remains to be dealt with. The subject was first taken up in the committee of the whole on June 13. Terms of one, two and three years were considered, the latter being

\textsuperscript{80} Ibid., II, 202 and 203.
\textsuperscript{81} Ibid., II, 205 and 215.
\textsuperscript{82} Ibid., II, 248.
\textsuperscript{83} Ibid., II, 249 and 251.
\textsuperscript{84} Ibid., II, 250 and 251.
adopted with four states in opposition. In the Convention itself, nine days later, two years was substituted for three. Ellsworth even favored one year. He thought that the people might be humored here. Hamilton, on the other hand, favored a three-year term as a check on democracy. The evidence shows that many of the delegates were against making even the House too democratic. However, the guiding principle here seems to have been to organize a body which would appeal to the people rather than an agency for the protection of property rights.

The Senate

It must be recalled that before the adoption of the Seventeenth Amendment, United States Senators were elected by the state legislature for six years, one-third of them going out of office each year. In the Convention, election by the legislatures was considered separately, while the six-year term and continuity of membership were discussed together.

The original Virginia plan provided for the nomination of senatorial candidates by the state legislatures and election by the House of Representatives. In introducing this provision on May 31, Randolph said that:

"the general object was to provide a cure for the evils under which the United States laboured; that in tracing these evils to their origin every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought against this tendency of our governments: and that a good Senate seemed most likely to answer the purpose."

Spaight immediately moved for election of the Senate by the state legislatures. The motion, however, was withdrawn when King pointed out that it would destroy proportionate representation. Pinckney then proposed to strike out nomination by the legislature from the Virginia provision, which would have made the Senate entirely elective by the House. This proposition was rejected unanimously, except for Virginia, which was divided. The question was now postponed. Not until August 9 was it finally settled, when election by the state legislature was agreed to.

There can be little doubt that this method of election was meant to protect property rights. Madison and Wilson, it is true, opposed choice by the legislatures because the latter were opposed to the trading interests. Wilson was the only delegate to favor popular election. Gerry next to Randolph, perhaps best expressed the sentiment of the majority. According to him, the two principal interests were the landed

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85 Ibid., I, 202, 214, 260 f.
86 Article I, Section 3, Clause 1.
88 Ibid., I, 152; II, 235.
and the commercial. To draw both branches from the people would give no protection to the second interest, since most people were farmers and imagined that their interests were different from those of the commercial group. 89

The Randolph resolutions made no mention of Senate continuity and indicated only that the term should be long enough to guarantee independence. On June 12, Spaight moved a seven-year term. Sherman wanted five years; Pierce, three. Randolph supported Spaight, pointing out that democratic licentiousness proved the need for a firm Senate. The motion was adopted with but one dissenting vote. 90

Some of the New England delegates, however, remained dissatisfied. On June 25, in the committee of the whole, a motion introduced by Sherman and providing for striking out the seven-year term, was adopted. The next day Gorham moved to fill the blank with six years, one third to go out every second year. 91 This brought on a new discussion.

Madison made the principal speech this time. He observed that no agrarian attempts had yet been made, but there had been "symptoms of a leveling spirit." This was to be guarded against by creating a body "sufficiently respectable for its wisdom and virtue." He therefore proposed a nine-year term. 92

Wilson agreed that a nine-year term was desirable, but for the reason that the Senate would have the treaty-making power. A treaty with England had been impossible because of the instability of the government. 93

Despite the arguments of Madison and Wilson the nine-year proposal was rejected, with only three states voting for it. The Gorham motion was then approved by seven affirmative votes. This measure became permanent on August 9. 94

The delay between approval by the committee of the whole and the final vote of the Convention gave Gouverneur Morris a chance to express himself. His idea of the Senate was one appointed by the executive for life. It was to represent the rich as a check on the poor; the plan was to be put through "by bribing the demagogues." 95

Outside of Wilson's idea of trade promotion through the treaty power, the delegates associated the Senate with the protection of property rights and a check on too much democracy. Hamilton and Martin, in addition to those already referred to, gave eloquent testimony

89 Ibid., I, 152.
90 Ibid., I, 218.
91 Ibid., 408 and 421.
92 Ibid., I, 421 f.
93 Ibid., I, 426.
94 Ibid., I, 426; II, 235.
95 Ibid., I, 511.
as to this. According to Madison, it was the "Great Anchor of the Government." Even Mason, more democratic than many, thought that "one important object of constituting the Senate was to secure the rights of property." 96

THE PRESIDENCY

In creating the executive department three main points were considered by the Convention: the question of a singular or plural executive, the method of election, and the veto power.

The first of these questions caused little debate. The Randolph resolutions did not indicate whether the executive was to be singular or plural. Randolph himself favored the latter type. On June 1, however, Wilson introduced a motion for a single executive, and, after a delay of three days, it was carried with little opposition. 97

The election of the President was one of the hardest problems of the Convention. Under the original Virginia plan the executive was to be elected by Congress, the term was left blank and there was to be no eligibility for re-election. The last point was meant to give the executive a certain degree of independence. 98

In June, in the committee of the whole, a motion of Charles Pinckney for a seven-year term was carried by a five to four vote, with Maryland divided, the question of the method of the election being temporarily postponed. Wilson on this occasion favored a popular election as the plan most likely to result in the choice of men of notoriety and in the independence of the executive. The very next day Wilson returned to the subject, proposing election by presidential electors popularly chosen. He was voted down, with only two states supporting him. Then the committee adopted a motion providing for election by the national legislature. 99

This method did not altogether satisfy the Convention. When the question came up again, almost two months later, it was referred to a committee of eleven. September 4, this committee reported in favor of a popularly chosen electoral college and for a four-year term. According to the committee report the Senate was to make the choice in case no one received a majority of the electoral vote. Wilson opposed this provision as tending to give the Senate so much power as to make it overshadow the House. Consequently election by the House in case of no majority was substituted on motion of Sherman, and the committee's whole report was adopted with little opposition. 100

There is no direct evidence to show that this method of electing the

96 Ibid., I, 438.
97 Ibid., I, 64, 97.
98 Ibid., I, 20.
99 Ibid., I, 68-69 and 80.
100 Ibid., II, 480, 497-98, 501, 522, 524-27.
President was meant to protect property rights. In fact, at least some of the delegates believed that the President should represent all of the people. Gerry opposed popular election as likely to bring the chief executive under the control of a particular group like the Cincinnati. Gouverneur Morris favored popular election, since the President was to be the protector of the people.\textsuperscript{101}

One of the factors which guided the committee in its decision for the electoral college system, was, according to Morris, "the indispensable necessity of making the executive independent of the legislature."\textsuperscript{102}

To one who has traced the presidential election problem through its various phases, this seems to have been the guiding principle throughout. Even here protection of property rights was perhaps indirectly aimed at, since insuring the independence of the President made his veto power effective.

According to the Randolph resolutions the veto power was to be exercised by the executive together with a number of the national judiciary, and passage over the veto was to be by a simple majority vote.\textsuperscript{103}

On June 4, a motion to make the veto absolute failed, despite the support of Wilson and Hamilton. Then the principle of over-riding the veto by a two-thirds vote was adopted. At the same time Gerry introduced and secured the passage of a motion to eliminate the judiciary from participation in the veto power. The reason for this, as explained by Luther Martin, was that the judiciary would have the power to declare laws unconstitutional and should not decide upon the laws in two different capacities.\textsuperscript{104}

Two months later the majority necessary to over-rule a veto was raised to three-fourths. In the end, though, the two-thirds requirement was restored, to win popular favor and to prevent the concentration of power in the hands of a few. Both Gouverneur Morris and Hamilton held out for the larger majority on the ground that a two-thirds vote had not been effective in checking popular legislation in New York. Gerry, in taking a stand against the higher requirements, contended that the primary purpose of the veto was to defend the power of the executive department.\textsuperscript{105}

Madison combined the Morris-Hamilton and Gerry ideas. He said, "The object of the revisionary power is twofold: 1. to defend the executive right. 2. To prevent popular or factious injustice." It was the latter that gave him chief concern. Earlier he had pointed out that

\textsuperscript{101} Ibid., I, 52 and 114.
\textsuperscript{102} Ibid., II, 499.
\textsuperscript{103} Ibid., II, 499.
\textsuperscript{104} Ibid., I, 76, 98, 103.
\textsuperscript{105} Ibid., II, 289 and 585.
the state legislatures showed a tendency to pass pernicious laws; the
veto power was to check any similar tendency in the national legis-
lature.\footnote{Ibid., II, 110 and 586.} This obviously meant that the presidential negative was
intended largely to protect property rights.

**THE LEGISLATIVE NEGATIVE**

One of Madison's pet ideas was a negative of the national legislature
on the state legislatures. Almost two months before the Convention
met he wrote Randolph: "Let it (Congress) have a negative on the
legislative acts of the states, as the king of Great Britain heretofore had.
This I conceive to be essential and the least possible abridgement of
the state sovereignties."\footnote{O. G. Libby, *Geographical Distribution of the Vote of the Thirteen States on
the Federal Constitution* (Madison, 1894), 51.}

A modification of this letter was incorporated in the Virginia plan. Congress was to have the power to "negative all laws passed by the
several states contravening in the opinion of the national Legislature
the articles of the union." This resolution made in the form of a motion
by Franklin, was agreed to in committee of the whole, May 31, without
debate or dissent. A week later Charles Pinckney moved that Congress
should be given the power "to negative all laws which they should judge
improper," thus reverting to the original Madison idea. In defense of
his measure Pinckney pointed out that state legislatures had often
violated acts of Congress and foreign treaties as well. Madison, coming
to Pinckney's aid, also mentioned treaty violations. The motion was
voted down by a large majority.\footnote{Records of the Federal Convention, 1, 22, 54, 164.}
But the stand taken by its two advocates shows that it was meant to promote commerce as well as to
check anti-creditor legislation.

The original Randolph resolution came up for consideration on
July 17 and was rejected because most of the delegates thought the
same purpose could be better carried out by the courts. Sherman seems
to have thought that the legislative negative would have prevented
judicial review of acts of the state legislatures.\footnote{Ibid., I, 27.} The idea, in fact, is
mainly important as affording one proof that the constitutional fathers
intended a judicial veto of state legislation.

**JUDICIAL REVIEW**

It was on this very occasion that Luther Martin moved his famous
"supreme law of the land" clause, to the effect that all acts of Congress
made in pursuance of the Constitution and all treaties made under the
authority of the United States should be the supreme law of the re-
spective states and enforceable in the state courts anything in their own
state constitutions to the contrary notwithstanding. This clause, slightly modified later in the Convention, because of second strong proof of the right of judicial review of state laws. Martin's intention, it is true, as he later explained, was to limit the national government by reserving original jurisdiction over federal cases to the state courts. Still the principle of the thing was the same.

The other clause on which the right of judicial review is based in the finished Constitution, is to be found in the section defining the jurisdiction of the federal courts. The most significant part of the clause reads: "The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the laws of the United States and treaties made, or which shall be made under their authority." There is still a great deal of disagreement among historians and writers on constitutional law as to the precise meaning of this passage. Many authorities, while accepting the doctrine of judicial review, deny that there is any definite provision in the Constitution supporting it. Nevertheless, the author believes that any one who takes the trouble to trace in detail the origin of the clause just quoted, will become convinced that it was intended to confer the power of review on the courts.

The Randolph resolutions stated that the jurisdiction of the national courts should extend to certain enumerated cases and "to all cases involving the national peace and harmony." A motion to this effect was agreed to in the committee of the whole, on June 13. Five days later the provision was amended, without dissent, to read that the jurisdiction of the national courts should extend "to all laws arising under the national constitution and to such other questions as may involve the national peace and harmony." Toward the end of August, Dr. Samuel Johnson of Connecticut moved an amendment to make the national jurisdiction extend "to all cases arising under this Constitution and the national laws." This was agreed to by the unanimous vote of all the states, though Madison personally opposed it as giving the courts control in political matters as well as in purely judicial.

Thus the right of judicial review was built up step by step. The original provision gave the federal courts supervision over the states. The Johnson amendment extended this supervision to Congress, without giving up judicial control over the states, since the Constitution in the meantime had been made the supreme law of the land.

An attempt was made in the Committee of Detail to give the federal judiciary an explicit negative on state laws. One of the early drafts in

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110 Ibid., II, 27; III, 287.
111 Article III, Section 2.
113 Ibid., II, 430.
the hand writing of Randolph stated that "all laws of a particular state, repugnant hereto, shall be void, and in the decision thereon, which shall be vested in the supreme judiciary, all incidents without which the general principles cannot be satisfied shall be considered as involved in the general principle."\textsuperscript{114}

Not only the proceedings of the Convention prove that judicial review was intended by the fathers. The opinion of the signers of the Constitution, and of those who refused to sign, proves this and more. It shows that judicial review was largely meant to protect property rights. Only a few statements can be cited here.

According to Madison all the members of the Convention felt throughout its proceedings "the necessity of some constitutional and effective provision guarding the Constitution and the laws of the Union against violations of them by the laws of the States." Madison was not here referring explicitly to judicial review; he included the legislative negative as well. In view of the fact, however, that judicial review was finally preferred to the legislative negative, his statement is a fairly strong argument in favor of the former practice. Only Mercer and Dickinson definitely opposed judicial review in the Convention; and they were referring to acts of Congress rather than to state legislation.\textsuperscript{115}

More direct statements are not wanting. William R. Davie of North Carolina believed that "without a general controlling judiciary laws might be passed in particular states to enable its citizens to defraud the citizens of other states."\textsuperscript{116}

Luther Martin as attorney for the defense in the Chase impeachment case, in 1804, declared that the framers of the Constitution feared that the laws of the United States "might be very obnoxious to, and unpopular in, some of the states . . . To obviate this the Constitution has a provision for an appeal to the Supreme Court even from the verdict of a jury."

If judicial supremacy had for its primary purpose the protection of property rights, it was also designed to promote commerce. Statements like those of Davie and Martin can be interpreted in both ways. It has already been noted that Pinckney and Madison favored the legislative negative to protect national treaties from legislative attacks of the states. The inclusion, by the Committee of Detail, of treaties within the jurisdiction of the federal courts had the same end in view.\textsuperscript{117}

**Guarantees Against Domestic Violence**

There are two guarantees against domestic violence in the Constitution. The first of these is meant as a protection for the federal govern-

\textsuperscript{114} Ibid., II, 144.
\textsuperscript{115} Ibid., II, 298; III, 527.
\textsuperscript{116} Ibid., III, 115.
\textsuperscript{117} Farrand, 155.
It gives Congress the authority "To provide for calling for the militia to execute the laws of the Union, suppress insurrections and repel invasions."\(^\text{118}\)

The Virginia plan provided for calling forth the militia against any member of the Union failing to fulfill its duties. According to the New Jersey Plan, force could be used against individuals as well as against states. The idea of using compulsion against states was finally dropped, and the clause was put into its present form by the Committee of Detail and agreed to, with no opposition, on August 23.\(^\text{119}\)

The obvious purpose of this clause was to avoid such violation of federal laws as had occurred under the Articles. No direct evidence indicates that its purpose was the securing of property rights.

The second safe-guard against violence is much more the important of the two. The United States guarantees to each state a republican form of government and agrees to afford to each protection against domestic violence on the application of the legislature, or of the executive if the legislature cannot be convened.\(^\text{120}\)

The first motion on this subject, based upon the Randolph resolutions, read "that a republican Constitution and its existing laws ought to be guaranteed to each state by the United States." It met no opposition in the committee of the whole. When it came up for consideration in the Convention, Gouverneur Morris said that he was unwilling to guarantee Rhode Island's laws; but was assured by Wilson that "The object is merely to secure the States against dangerous commotions, insurrections and rebellions."\(^\text{121}\)

To meet Morris's objection the clause was amended so as to have the United States guarantee a republican form of government. The Committee of Detail added the idea that federal aid was to be given against domestic violence only on the application of the legislature. Pinckney, Dickinson and Dayton opposed this change. Dayton thought that the conduct of Rhode Island showed the necessity of suppressing domestic violence even against the state legislature. An effort to strike out the provision making an application of the legislature necessary was rejected. To appease the delegates most anxious for federal protection a clause was added giving the state executive the power to call for federal aid when the legislature was not in session.\(^\text{122}\)

Most of the delegates seemed to be strongly in favor of this measure. Oddly enough the New England members were less interested than some of the others. Gerry was opposed altogether. He said that Shays'\(^\text{123}\)

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\(^{118}\) Article I, Section 8.
\(^{120}\) Article IV, Section 4.
\(^{121}\) *Records of the Federal Convention*, I, 22; II, 47.
Rebellion would have resulted in more bloodshed if the federal government had intermeddled.\textsuperscript{123}

\textbf{The Prohibitions Against the States}

To protect private property against state legislative aggressions, the Constitution says that no state is to coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debt; or pass "any law impairing the obligation of contracts."\textsuperscript{124}

Randolph in excusing the makers of the Articles for not doing a better job said that "the havoc of paper money had not been foreseen." But strange to say his own plan contained no prohibition against the emission of paper money or the violation of contracts. The first prohibition was introduced by Randolph himself in the Committee of Detail. This committee, on August 6, reported a clause that "No state without the consent of the United States shall emit bills of credit, or make anything but specie a tender in the payment of debt."\textsuperscript{125}

The Committee's report was considered on August 28. Wilson and Sherman moved to make the prohibition absolute. Their motion was carried, despite the fact Gorham was afraid it would antagonize the people. Sherman argued that is was a favorable moment for crushing paper money.\textsuperscript{126}

The same day King moved to add a prohibition against state interference in private contracts. Gouverneur Morris believed that this was going too far—that the courts were sufficient protection. Mason argued that interference with contracts was sometimes necessary. Though Sherman, Wilson, Madison and other important delegates favored this clause, it was not voted on at this time. But the report of the Style Committee, made on September 12, contained all of the prohibitions found in the present Constitution. The report was adopted two days later.\textsuperscript{127}

It is interesting to note that Gerry on the latter occasion introduced a motion to prohibit Congress from impairing contracts. His motion was not even seconded.\textsuperscript{128}

Madison gave what seems to be the best interpretation to the restraints on the states when he said: "The evil which produced the prohibitory clause in the Constitution of the United States was the practice of the states in making bills of credit, and in some instances appraised property, a legal tender."\textsuperscript{129} Yet in presenting Governor

\textsuperscript{123} Ibid., II, 316.
\textsuperscript{124} Article I, Section 10.
\textsuperscript{125} Records of the Federal Convention, I, 18; II, 144.
\textsuperscript{126} Ibid., II, 439.
\textsuperscript{127} Ibid., II, 439, 596, 619.
\textsuperscript{128} Ibid., II, 619.
\textsuperscript{129} Ibid., III, 493.
Huntington with a copy of the Constitution, Sherman and Ellsworth said that this clause "was thought necessary as a security to commerce." They made no reference to property rights.

CONCLUSION

No attempt has been made to minimize the importance of property rights in the Convention. The author believes that the machinery of government was largely fashioned for this purpose. But if this point could be proved with even a greater degree of certainty, he would still hold that commerce was the guiding star of the Convention, for the following reasons:

First, the Convention grew out of commercial difficulties. Second, the members were more unanimously agreed, in the beginning at least, as to the need for commercial regulation. Third, the great debates and compromises of the Convention concerned commerce. Lastly, and most important, it was in the field of commerce after all that the national government was made sovereign. More important than mere governmental machinery or restraints is sovereign power. The granting of sovereign power in foreign and interstate commerce showed where the real interests of the constitutional fathers lay.

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