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To the People of the State of New-York.

I proceed now to trace the real characters of the proposed executive as they are marked out in the plan of the Convention. This will serve to place in a strong light the unfairness of the representations which have been made in regard to it.

The first thing which strikes our attention is that the executive authority, with few exceptions, is to be vested in a single magistrate. This will scarcely however be considered as a point upon which any comparison can be grounded; for if in this particular there be a resemblance to the King of Great-Britain, there is not less a resemblance to the Grand Signior, to the Khan of Tartary, to the man of the seven mountains, or to the Governor of New-York.

That magistrate is to be elected for *four* years; and is to be re-eligible as often as the People of the United States shall think him worthy of their confidence. In these circumstances, there is a total dissimilitude between *him* and a King of Great-Britain; who is an *hereditary* monarch, possessing the crown as a patrimony descendible to his heirs forever; but there is a close analogy between *him* and a Governor of New-York, who is elected for *three* years, and is re-eligible without limitation or intermission. If we consider how much less time would be requisite for establishing a dangerous influence in a single State, than for establishing a like influence throughout the United States, we must conclude that a duration of *four* years for the Chief Magistrate of the Union, is a degree of permanency far less to be dreaded in that office, than a duration of *three* years for a correspondent office in a single State.

The President of the United States would be liable to be impeached, tried, and upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law. The person of the King of Great-Britain is sacred and inviolable: There is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution. In this delicate and important circumstance of personal responsibility, the President of confederated America would stand upon no better ground than a Governor of New-York, and upon worse ground than the Governors of Maryland and Delaware.[1]

The President of the United States is to have power to return a bill, which shall have passed the two branches of the Legislature, for re-consideration; but the bill so returned is to become a law, if upon that re-consideration it be approved by two thirds of both houses. The King of Great Britain, on his part, has an absolute negative upon the acts of the two houses of Parliament. The disuse of that power for a considerable time past, does not affect the reality of its existence; and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the President differs widely from this absolute negative of the British sovereign; and tallies exactly with the revisionary authority of the Council of revision of this State, of which the Governor is a constituent part. In this respect, the power of the President would exceed that of the Governor of New-York; because the former would possess singly what the latter shares with the Chancellor and Judges: But it would be precisely the same with that of the Governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the Convention have copied.[2]

The President is to be the "Commander in Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He is to have power to grant reprieves and pardons for offences against the United States, *except in cases of impeachment*; to recommend to the consideration of Congress such measures as he shall judge necessary and expedient; to convene on extraordinary occasions both houses of the Legislature, or either of them, and in case of disagreement between them *with respect to the time of adjournment*, to adjourn them to such time as he shall think proper; to take care that the laws be faithfully executed; and to commission all officers of the United States." In most of these particulars the power of the President will resemble equally that of the King of Great-Britain and the Governor of New-York. The most material points of difference are these—First; the President will have only the occasional command of such part of the militia of the nation, as by legislative provision may be called into the actual service of the Union—The King of Great-Britain and the Governor of New-York have at all times the entire command of all the militia within their several jurisdictions. In this article therefore the power of the President would be inferior to that of either the Monarch or the Governor.—Secondly; the President is to be Commander in Chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the King of Great-Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the confederacy; while that of the British King extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies; all which by the Constitution under consideration would appertain to the Legislature.[(a)] The Governor of New-York on the other hand, is by the Constitution of the State vested only with the command of its militia and navy.[3] But the Constitutions of several of the States, expressly declare their Governors to be the Commanders in Chief as well of the army as navy;[4] and it may well be a question whether those of New-Hampshire and Massachusetts,[5] in particular, do not in this instance confer larger powers upon their respective Governors, than could be claimed by a President of the United States.—Thirdly; the power of the President in respect to pardons would extend to all cases, *except those of impeachment*. The Governor of New-York may pardon in all cases, even in those

of impeachment, except for treason and murder.[6] Is not the power of the Governor in this article, on a calculation of political consequences, greater than that of the President? All conspiracies and plots against the government, which have not been matured into actual treason, may be screened from punishment of every kind, by the interposition of the prerogative of pardoning. If a Governor of New-York therefore should be at the head of any such conspiracy, until the design had been ripened into actual hostility, he could ensure his accomplices and adherents an entire impunity. A President of the Union on the other hand, though he may even pardon treason, when prosecuted in the ordinary course of law, could shelter no offender in any degree from the effects of impeachment & conviction. Would not the prospect of a total indemnity for all the preliminary steps be a greater temptation to undertake and persevere in an enterprise against the public liberty than the mere prospect of an exemption from death and confiscation, if the final execution of the design, upon an actual appeal to arms, should miscarry? Would this last expectation have any influence at all, when the probability was computed that the person who was to afford that exemption might himself be involved in the consequences of the measure; and might be incapacitated by his agency in it, from affording the desired impunity. The better to judge of this matter, it will be necessary to recollect that by the proposed Constitution the offence of treason is limitted "to levying war upon the United States, and adhering to their enemies, giving them aid and comfort," and that by the laws of New-York it is confined within similar bounds.[7]— Fourthly; the President can only adjourn the national Legislature in the single case of disagreement about the time of adjournment. The British monarch may prorogue or even dissolve the Parliament. The Governor of New-York may also prorogue the Legislature of this State for a limited time; a power which in certain situations may be employed to very important purposes.[8]

The President is to have power with the advice and consent of the Senate to make treaties; provided two thirds of the Senators present concur. The King of Great-Britain is the sole and absolute representative of the nation in all foreign transactions. He can of his own accord make treaties of peace, commerce, alliance, and of every other description. It has been insinuated, that his authority in this respect is not conclusive, and that his conventions with foreign powers are subject to revision, and stand in need of the ratification of Parliament. But I believe this doctrine was never heard of 'till it was broached upon the present occasion. Every jurist[(b)] of that kingdom, and every other man acquainted with its constitution knows, as an established fact, that the prerogative of making treaties exists in the crown in its utmost plenitude; and that the compacts entered into by the royal authority have the most complete legal validity and perfection, independent of any other sanction. The Parliament, it is true, is sometimes seen employing itself in altering the existing laws to conform them to the speculations in a new treaty; and this may have possibly given birth to the imagination that its co-operation was necessary to the obligatory efficacy of the treaty. But this parliamentary interposition proceeds from a different cause; from the necessity of adjusting a most artificial and intricate system of revenue and commercial laws to the changes made in them by the operation of the treaty; and of adapting new provisions and precautions to the new state of things, to keep the machine from running into disorder. In this respect therefore, there is no comparison between the intended power of the President, and the actual power of the British sovereign. The one can perform alone, what the other can only do with the concurrence of a branch of the Legislature. It must be admitted that in this instance the power of the fœderal executive would exceed that of any State executive. But this arises

naturally from the exclusive possession by the Union of that part of the sovereign power, which relates to treaties. If the confederacy were to be dissolved, it would become a question, whether the executives of the several States were not solely invested with that delicate and important prerogative.

The President is also to be authorised to receive Ambassadors and other public Ministers. This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance, which will be without consequence in the administration of the government, and it was far more convenient that it should be arranged in this manner, than that there should be a necessity of convening the Legislature, or one of its branches, upon every arrival of a foreign minister; though it were merely to take the place of a departed predecessor.

The President is to nominate and *with the advice and consent of the Senate* to appoint Ambassadors and other public Ministers, Judges of the Supreme Court, and in general all officers of the United States established by law and whose appointments are not otherwise provided for by the Constitution. The King of Great-Britain is emphatically and truly stiled the fountain of honor. He not only appoints to all offices, but can create offices. He can confer titles of nobility at pleasure; and has the disposal of an immense number of church preferments. There is evidently a great inferiority, in the power of the President in this particular, to that of the British King; nor is it equal to that of the Governor of New-York, if we are to interpret the meaning of the constitution of the State by the practice which has obtained under it. The power of appointment is with us lodged in a Council composed of the Governor and four members of the Senate chosen by the Assembly. The Governor *claims* and has frequently *exercised* the right of nomination, and is *entitled* to a casting vote in the appointment. If he really has the right of nominating, his authority is in this respect equal to that of the President, and exceeds it in the article of the casting vote.[9] In the national government, if the Senate should be divided, no appointment could be made: In the government of New-York, if the Council should be divided the Governor can turn the scale and confirm his own nomination.[(c)] If we compare the publicity which must necessarily attend the mode of appointment by the President and an entire branch of the national Legislature, with the privacy in the mode of appointment by the Governor of New-York, closeted in a secret apartment with at most four, and frequently with only two persons, and if we at the same time consider how much more easy it must be to influence the small number of which a Council of Appointment consist than the considerable number of which the national Senate would consist, we cannot hesitate to pronounce, that the power of the Chief Magistrate of this State in the disposition of offices must in practice be greatly superior to that of the Chief Magistrate of the Union.

Hence it appears, that except as to the concurrent authority of the President in the article of treaties, it would be difficult to determine whether that Magistrate would in the aggregate, possess more or less power than the Governor of New-York. And it appears yet more unequivocally that there is no pretence for the parallel which has been attempted between him and the King of Great-Britain. But to render the contrast, in this respect, still more striking, it may be of use to throw the principal circumstances of dissimilitude into a closer groupe.

The President of the United States would be an officer elected by the people for *four* years. The King of Great-Britain is a perpetual and *hereditary* prince. The one would be amenable to personal punishment and disgrace: The person of the other is sacred and inviolable. The one

would have a *qualified* negative upon the acts of the legislative body: The other has an *absolute* negative. The one would have a right to command the military and naval forces of the nation: The other in addition to this right, possesses that of *declaring* war, and of *raising* and *regulating* fleets and armies by his own authority. The one would have a concurrent power with a branch of the Legislature in the formation of treaties: The other is the *sole possessor* of the power of making treaties. The one would have a like concurrent authority in appointing to offices: The other is the sole author of all appointments. The one can infer no privileges whatever: The other can make denizens of aliens, noblemen of commoners, can erect corporations with all the rights incident to corporate bodies. The one can prescribe no rules concerning the commerce or currency of the nation: The other is in several respects the arbiter of commerce, and in this capacity can establish markets and fairs, can regulate weights and measures, can lay embargoes for a limited time, can coin money, can authorise or prohibit the circulation of foreign coin. The one has no particle of spiritual jurisdiction: The other is the supreme head and Governor of the national church!—What answer shall we give to those who would persuade us that things so unlike resemble each other?—The same that ought to be given to those who tell us, that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism.

(a) *A writer in a Pennsylvania paper, under the signature of* Tamony *has asserted that the King of Great-Britain owes his prerogatives as Commander in Chief to an annual mutiny bill.*[10]*—The truth is on the contrary that his prerogative in this respect is immemorial, and was only disputed "contrary to all reason and precedent," as Blackstone, vol.* I, *p.* 262, *expresses it, by the long parliament of Charles the first, but by the statute the* 13, *of Charles second, ch.* 6, *it was declared to be in the King alone, for that the sole supreme government and command of the militia within his Majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength,* ever was and is *the undoubted right of his Majesty and his royal predecessors Kings and Queens of England, and that both or either House of Parliament cannot nor ought to pretend to the same.*

(b) *Vide Blackstone's Commentaries, page* 257.

(c) *Candor however demands an acknowledgment, that I do not think the claim of the Governor to a right of nomination well founded. Yet it is always justifiable to reason from the practice of a government till its propriety has been constitutionally questioned. And independent of this claim, when we take into view the other consideration[s] and pursue them through all their consequences, we shall be inclined to draw much the same conclusion.*

1. The New York constitution provided that state officials could be impeached for "crimes and misdemeanors." The judgment of impeachment could not extend any farther "than to removal from office, and disqualification to hold or enjoy any place of honor, trust, or profit under this State. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land." The constitutions of Virginia (it was substituted for Maryland in the MLean edition) and Delaware have identical provisions: "If found guilty, he or they shall be either forever disabled to hold any office under government, or removed from office pro tempore, or subjected to such pains and penalties as the laws shall direct."

2. The veto provisions of the U.S. and Massachusetts constitutions are almost identical, except for the fact that the governor of Massachusetts had to return a vetoed bill within five days.

3. The New York constitution provided that the governor "shall, by virtue of his office, be general and commanderin-chief of all the militia, and admiral of the navy of this State."

4. The constitutions of Delaware, Georgia, Massachusetts, New Hampshire, and South Carolina all provided that the governor was to be commander in chief of the army and navy. The Maryland constitution gave the governor the command of the land and sea forces but he could not command them in person without the advice of the Council.

5. The Massachusetts and New Hampshire constitutions granted several military powers to their state executives that were not given to the President of the United States by the U.S. Constitution. For example, the state executives of these two states could train, instruct, and exercise the state militias; could assemble and lead the inhabitants of the states in repelling and expelling invaders; and could declare martial law over the army, navy, and militia during times of war and invasion.

6. The New York constitution gave the governor the power "to grant reprieves and pardons to persons convicted of crimes, other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting; and they shall either pardon or direct the execution of the criminal, or grant a further reprieve."

7. An act passed on 16 February 1787 stated "That if any person do levy war against the people of this State, within this State, or be adherent to the enemies of the People of this State or of the United-States of America, within this State, giving to them aid and comfort in this State, or elsewhere, and be thereof by good proof attainted of open deed, such offences and none other, shall be adjudged treason against the People of the State of New-York." No one could be indicted, tried, or attainted of treason, except "by and upon the oath and testimony of two lawful witnesses, either both of them to the same overt act, or one of them to one, and the other of them to another overt act of the same treason." Hamilton was a member of the legislature that passed this act.

8. The New York constitution gave the governor the power to prorogue the legislature "from time to time, provided such prorogations shall not exceed sixty days in the space of any one year."

9. George Clinton, the governor of New York since the constitution was adopted in 1777, had assumed the sole right to nominate appointees, and for years this right went virtually unchallenged. In early 1794, while Clinton was still governor, the right to nominate was seized, against Clintons strenuous objections, by the majority party (i.e., Federalists) in the House of Assembly.

10. "Tamony" noted that "The office of president is treated with levity and intimated to be a machine calculated for state pageantrySuffer me to view the commander of the fleets and armies of America, with a reverential awe, inspired by the contemplation of his great prerogatives, though not dignified with the magic name of King, he will possess more supreme power, than Great Britain allows her hereditary monarchs, who derive ability to support an army from annual supplies, and owe the command of one to an annual mutiny law. The American President may be granted supplies for two years, and his command of a standing army is unrestrained by law or limitation."

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