The fulfillment or non-fulfillment of the predictions in the federal convention of 1787

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THE FULFILLMENT OR NON-FULFILLMENT OF THE
PREDICTIONS IN THE FEDERAL CONVENTION OF 1787.

THESIS
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of the State University of Iowa in partial
fulfillment of the requirements for the
degree of Master of Arts.

by
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Author's Preface.

The predictions found in this work were taken from Madison's Journal of the Federal Convention contained in Elliot, Jonathan, The Debates in the State Conventions on the Adoption of the Federal Constitution, (J. B. Lippincott Co., 1907) Vol. V. Page references found in the text following refer to this volume.
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Chap. I. Why the predictions are important.

On May 25, 1787, a convention of fifty-five delegates from twelve of the states composing the Confederation assembled in Philadelphia for the purpose of discussing means by which the weaknesses of the government could be remedied. From this time until the work of the convention was finished, September 17, 1787, the members indulged in a great deal of speculation as to the future of the country. These speculations are interesting and significant to us, who live after a sufficient amount of time has elapsed to verify them. They are significant because of their historical foundation; because of the prominence of the men who made them; because of their influence upon the future of the government; and finally because of their historical value in revealing the condition of the states in 1787, as well as the views of the men who lived at that time.

Any intelligent speculation must be based on a thorough knowledge of the facts, and conditions must be weighed and compared and conclusions drawn therefrom. Nobody of men could have realized this more than did the authors in the federal convention, hence they founded their speculations upon the experience of the ancient world, Europe, and their own states. Sixteen of the twenty-nine prophets of the convention definitely referred to historical incidents as bases for their assumptions, and no doubt the remaining thirteen formulated their ideas upon historical experience, as all were acquainted with history and law. A few examples will illustrate
this use of history in making the predictions. Alexander Hamilton used the Amphictyonic Council and the German Confederation as examples of unsuccessful attempts to form a government with the states as sovereigns. (p.200). Pierce Butler contended for a single magistrate because of "the opportunity he had had of seeing the manner in which a plurality of military heads distracted Holland when threatened with invasions by the military troops". (p.149). George Mason opposed allowing the senate to originate money bills. "He compared the case to Poynings' law, and signified that the House of Representatives might be rendered, by degrees, like the Parliament of Paris, the mere depository of the decrees of the Senate". (p.415). Nathaniel Gorham used the experience of Massachusetts to support his prediction (p.238). "The constitution of Massachusetts had provided that the representatives of the larger districts should be in exact ratio to their numbers; and experience, he thought, had shown the provision to be expedient."

The predictions are important because of the ability, education, and experience of their authors. Fifteen of them were college graduates, and the majority had spent some time in college. Twenty of them had studied law, and hence were acquainted with the history and principles of government. Nine of them had been abroad, and had seen one or more of the European governments in practice. In addition to their education and training, they had all held some public office in their respective states, and many of them had been members of the Continental Congress and the Congress of the Confederation. In addition to this incidental training, some of them, realizing the importance of the issue at stake,
had especially prepared for it by making a detailed study of all the confederacies and free institutions both ancient and modern. Alexander Hamilton, James Wilson, and James Madison belong to this group.

Not only were such men the makers of the predictions, but they were to have an opportunity to help verify those predictions foretelling good and disprove those foreboding ill. The authors were practically all young men whose work had just begun. Only one, Benjamin Franklin, was over sixty years of age, fifteen were under forty, and the average age of the whole number was only forty-three. Many of them held public offices under the first administration. John Langdon, William Patterson, and George Read were senators in the first congress; James Madison, Roger Sherman, and Elbridge Gerry were representatives; Alexander Hamilton was secretary of the treasury; Edmund Randolph was attorney general; and John Rutledge and James Wilson were associate justices in the supreme court.

The predictions in the federal convention have served to guide the government by determining the use of the constitution, and holding out warnings to the public officers. The written constitution forms but the embryo of our great body of written and unwritten law, but the predictions in the convention reveal the attitude which the authors would have taken toward many of these laws. A few examples will suffice to illustrate this point. The constitution sets no limit to the number of terms one may serve as president, but precedent, an unwritten law, has decided that they shall be two in number. The predictions in the convention would support this as a method of avoiding tyranny. (p.146-154; 359; 552). Washington knew this and wisely allayed their fears by
refusing a third term. The constitution makes no provision for a national bank, and throughout its history it was declared unconstitutional. The defeat of the motion to give congress power "to charter incorporations" shows that this view would have been supported by the framers of the constitution. Rufus King said, "The states will be prejudiced and divided into parties by it. In Philadelphia and New York, it will be referred to the establishment of a bank which has been the subject of contention in those cities". (p.544). Likewise the vote and predictions (p.543) in the convention would support the argument that the construction of canals, at national expense, was unconstitutional. On this ground Madison vetoed the "bonus bill" in 1816 which provided a perpetual sum for the construction of roads and canals.

The principal rule in interpreting any body of laws is to determine the intention of the law giver when the law was enacted. Hence the predictions may reveal the intentions of the framers of the constitution. For example, the predictions (p.443;465) show that the framers of the constitution wished to give the national government large powers over the state militia. The predictions would not support the action of the governors of Connecticut and Massachusetts when they refused, in 1812, to allow the militia of their states to march at the order of the President. Likewise the predictions (p.333;438) would uphold the interpretation of the constitution allowing congress to suppress the Whiskey Rebellion and the Chicago Pullman Strike. Many of the framers of the constitution did not believe it necessary to state that the federal government had the right to suppress insurrection in the states.
"No doubt could be entertained that congress had the authority if they had the means."

Some of the warnings held out by the predictions are against an attempt to raise revenue by direct taxes (p.393,433). "Seize and sell their effects and you push them into revolts." A warning against the issuing of paper money (p.434); and a warning against the use of force by the federal government upon a state (p.258, 440).

Since the predictions were based on conditions as they existed, they reveal the situation of the colonies in 1787. The states were divided into parties, and since each state regarded itself as sovereign, party boundaries were state boundaries. Sometimes their differences and jealousies were based on industry (p.168 ); sometimes they were based on size (p.175;322;176;175;285); and sometimes on the holding of slaves. One peculiar fact with reference to this last point is, however, that the majority of people both north and south believed that slavery was gradually dying out, and that the southern states would finally abandon the trade themselves (p.457-458). Another peculiar condition existing at this time was the hostility against the settlement of the west and the people who should dwell there. There was the feeling that anything which could be done to stop this expansion would be advantageous (p.250;279;294;295;297;300;308;310;). The states felt themselves so separated in interests and motives that a person moving from one state to another would need as much time to adapt himself to his new home as would a foreigner. "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" than seven years (p.389)
Perhaps this is not difficult to understand when we remember the
difficulty of communication and travel at this time. "One year
will be almost consumed in preparing for and travelling to and
from the seat of national business". (p.184)

Some of the problems of the confederation brought out by the
predictions were; the regulation of commerce (p.454), and the
trouble with Spain to secure the navigation of the Mississippi
as an outlet for western trade (p.295); the difficulties with
England over the fisheries (p.526); and the opposition to the
Cincinnati (p.367).

The predictions reveal to us the views and opinions of their
authors, and are characteristic of their former services to the
country as well as of the great part they played in setting the
government on its feet. The following chapter will emphasize
these characteristics.
Chap. II. The Men who made the Predictions.

Out of the thirteen states who had been joined under the Articles of Confederation, Rhode Island alone refused to send delegates to the constitutional convention. Each of the twelve states in attendance contributed one or more predictions according to the nature, number, and prophetic tendencies of its delegates, twenty-nine of the fifty-five delegates who attended the convention made predictions.

There can be no question as to the ability of these men to make predictions, for nowhere in the world could an assembly of men be found so well versed in the knowledge of the past and so well prepared to apply the experiences of the past to present and future conditions. This preparation had come not only from the study of history and government, but many of the convention had been to Europe and studied free institutions in so far as they existed in England and portions of the continent. Others had had an active part in the formation of their state constitutions, and had traced the principles adopted in them to their success or failure.

It will be well to review the men who made the predictions in groups according to the states which they represented, since the subject matter of their predictions was generally suggested to emphasize principles for which the state as a whole stood.

Three of Massachusetts four delegates contributed thirty-one predictions. Elbridge Gerry headed the list with fifteen speculations which made him fourth in the whole list of contributors.
His Predictions were long, definite, and detailed, and verify the opinion which William Pierce of Georgia had of him, "He goes extensively into all subjects that he speaks on without respect to elegance or flower of diction". As Mr. Gerry had been a successful merchant, many of his predictions are concerned with commerce (p.169-70;144;305;310;433). Others bring out his dislike for anything aristocratic or monarchical, and are characteristic of his opposition to such during his public life (p.133;188;439;455;526). He had formerly shown this opposition by his refusal to serve in the senatorial branch of the Massachusetts Assembly. In 1785, when the convention met to revise the government, he opposed every move for enlarging the powers of Congress. In 1787, he finally refused to sign the constitution, feeling it to be undemocratic. Six of his predictions have been entirely or partially fulfilled.

Nathaniel Gorham made ten predictions. Seven of these refer to the legislative department, and three to the judicial department. Mr. Gorham's public life had made him interested in these two branches. He had been a member of the Massachusetts Assembly, of the Continental Congress, and a judge of the court of common pleas. As William Pierce said, "No man is more perspicuous and full." Three of his forecasts have been fulfilled.


Rufus King, although "he ranked among the luminaries of his age"#, made but six predictions, four relating to the executive department, and two relating to the judicial department. Early in his career he too had opposed a strong national government, but the year before the convention the formidable Shays' Rebellion had broken out in his state, which plainly showed the inability of the old Congress to interfere with or suppress an insurrection. This changed Mr. King's views and we find that in the convention he advocated a strong national government with representation in the legislature by people rather than states (p. 280;304). Three of Mr. King's predictions have been fulfilled.

New York contributed but eight predictions, and these were all made by one delegate, Alexander Hamilton. This small number was probably due to the fact that the two other delegates, Robert Yates and John Lansing, left the convention early in its proceedings. They had been influenced by Governor George Clinton, who had openly declared that no good could come from the convention at Philadelphia, and that the Articles of Confederation could still be made adequate to the needs of the Union. The object of Hamilton's predictions, as of all of his speeches, was to lessen the

force of state attachments and lead the delegates to a comprehen-
sion of the necessity of an efficient national sovereignty. That
he should put nation before state was natural, since he could
claim no state as his native state, having been born on the
little island of Nevis in the West Indies. This may also explain
his prediction that "persons in Europe of moderate fortunes will
be fond of coming here where they will be on a level with the first
citizens". Though an immigrant, Hamilton had held offices of honor
and distinction as high as any native citizen, and realized fully
the opportunities America offered. Five of Hamilton's Predictions
have been fulfilled.

In contrast to this strong national feeling contained in
Hamilton's predictions is the narrow state feeling expressed in
those of the two delegates from New Jersey, David Brearly  and
William Patterson. Their predictions have not been fulfilled
since the states have never aligned themselves according to size.

The delegates from Pennsylvania contributed more predictions
than those from any other state—fifty-two in number. Thirty of
these predictions were contributed by one man, Gouverneur Morris,
who liked to indulge in speculations on the future to such an ex-
tent as to place him first on the list of prophets. William Pierce
said of him, "With an infinite stretch of fancy he brings to view
things, when he is engaged in deep argumentation, that render all
the labor of reasoning easy and pleasing."#  Mr. Morris' predict-

# Ferrand, Max, Records of the Federal Convention, Vol.
III, p. 92.
ions show no indication of local prejudice, but in all of them as well as in his arguments he was an American and put forth great effort to extinguish state feeling in his colleagues. The circumstances of his life had prevented him from feeling these strong state attachments, since he had been born in one state, and resided for seven years in another from whose inhabitants he had received honors equal to any bestowed upon her native sons. This Americanism, however, was limited to the old Confederation, since he with others in the convention believed that measures ought to be taken to prevent the growth of the west, and keep the balance of power in the hands of the "Atlantic States". (p.279,294;298).

Mr. Morris was not democratic in his political opinions, but had an incurable distrust in mankind, as is shown by predictions on p. 346;386. His undemocratic tendencies are still further shown by the fact that he did not wish the executive to be impeachable (p.329;335;528;501). Among Mr. Morris' predictions are ten relating to commerce and finance (p.346;393;433;434;454;489). That he had a knowledge of commerce and finance is proven by the fact that the Continental Congress had chosen him as assistant financier with Robert Morris. This intimate knowledge of financial affairs also accounts for his predictions opposing paper money (p.434;436). Half of Mr. Morris' predictions were fulfilled.

James Wilson made twelve predictions. Like Gouverneur Morris, he was national in his ideas, since he was born in Scotland; but unlike him, he had an inherent trust in mankind and was
a warm advocate of representative government. This is shown by his predictions in the convention emphasizing an executive (p. 509) and members of both houses of the legislature chosen by the people (p.167;169;239;245). Wilson seems to have had a clearer conception than any of his contemporaries of the future course of the government of the United States. His ideas were those toward which the nation has ever since been working. He favored public improvements at national expense (p.543); he favored a national bank (p.544); and had argued for it at an earlier time saying, "Whenever an object occurs to the direction of which no particular state is competent, the management must of necessity belong to the United States in Congress assembled;" he argued for the popular election of senators in large districts, a method which has recently been adopted by a constitutional amendment. That he was more "national than his generation" may be explained by William Pierce's statement about him, "Government seems to have been his peculiar study, all the political institutions of the world he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time". Six of Mr. Wilson's predictions have been fulfilled.

Since Benjamin Franklin was the oldest public man in America, the convention listened to his predictions with great respect. His career of public service had extended over half a century in America and Europe. He enforced and substantiated his opinions by examples from Europe or the ancient world. From a study of these he was apprehensive "that the governments of these United States would end in monarchy". He expressed this fear in three predictions (p.146-154). In spite of these fears he had a great deal of confidence in the people of America, saying "this government is likely to be well administered for a course of years, and can only end in despotism as other forms have done before it, when the people shall have become so corrupted as to need despotic government" (p.554). Mr. Franklin's predictions, unlike the others, were not spontaneous, since, because of his age, he had placed his ideas on paper, which he had some other member of the Convention read. Five of Franklin's predictions have been fulfilled.

George Clymer made but one prediction and it has not been fulfilled.

The delegates of Delaware, Gunning Bedford, John Dickinson, and George Read, contributed four predictions. They had been sent to the convention with credentials prohibiting them from changing the Articles of Confederation, establishing an equality of votes among the states. Therefore, it is not surprising that Mr. Bedford's predictions should deal with fear of the large states. His predictions were radical and extreme and verify the
description given by William Pierce, "He is a bold nervous speaker and has a very commanding and striking manner, but he is warm and impetuous in his temper, and precipitate in his judgment". George Read's prediction is short and abstract (p.435). John Dickinson's prediction is an example of William Pierce's description of his speeches, "With an affected air of wisdom, he labors to produce a trifle, - his language is irregular and incorrect, - his flourishes (for he sometimes attempts them) are like expiring flames, they just show themselves and go out; no traces of them are left on the mind to cheer or animate it".

Although Connecticut had but two delegates who made predictions, Oliver Ellsworth and Roger Sherman, she contributed nineteen. Of this number, Mr. Ellsworth made eight. He came to the convention as a strong advocate for the right of the individual states, but with his "clear, deep, and copious understanding" he could see that compromise would be necessary unless the convention should end in failure. His predictions (p.239-438) show his efforts

#
to calm the opposing factions. He was justified in making two predictions with reference to the judiciary, since at the time of the convention he was Judge of the Supreme Court of Connecticut. Only two of his predictions have been fulfilled.

William Pierce said of Roger Sherman, "if he cannot embellish, he can furnish thoughts that are wise and useful." His predictions, no doubt, did appear to be reasonable and based on common sense, but conditions changed so that only four of them were fulfilled.

The prophets of Maryland were John Francis Mercer and Luther Martin, who together gave seven predictions. Mr. Mercer illustrated his predictions by examples from former history. Two of his predictions have been very definitely fulfilled (p.410-424). It was natural that Mr. Martin's two predictions should relate to the judiciary department, since he had been educated for the bar, and at the time of the convention, he was attorney general for Maryland. His predictions have been partially fulfilled.

John Langdon, New Hampshire's only prophet, contributed but one prediction (p.438). This prediction has usually been true. New Hampshire had but two delegates in the convention, Nicholas Gilman and Mr. Langdon.

Virginia stood second as a prophetic state in the convention. Three of her delegates, James Madison, Edmund Randolph, and George Mason, contributed forty-eight predictions. James Madison had realized the importance of the issue at stake and had prepared him-

self before the convention by studying all the confederacies and federal arrangements, both ancient and modern. William Pierce said of him, "In the management of every great question, he evidently took the lead in the convention, and though he cannot be called an orator, he is a most agreeable, eloquent, and convincing speaker. From a spirit of industry and application, which he possesses in a most eminent degree, he always comes forward the best informed man of any point in debate. The affairs of the United States, he perhaps has the most correct knowledge of, of any man in the union." His predictions testify to his broad national views and are entirely free from any state or local prejudices. He desired to give Congress large powers over foreign and interstate trade (p.455). The conflict as to jurisdiction between Maryland and Virginia had convinced him of the disadvantages of state control over trade. He believed that for the good of the whole country national tribunals with extensive powers should be established (159;164;329;345). Most of Mr. Madison's predictions reveal his accurate knowledge of conditions and correct foresight based upon them (p.140;264;392;409;465;477). The fulfilment of his prediction regarding slavery, that "twenty years will produce all the mischief that can be apprehended from the liberty to import slaves (p.477) has been especially significant. Fourteen of Mr. Madison's predictions have been entirely or partially fulfilled.

Edmund Randolph made seven predictions in the convention, two of which have been fulfilled. Two of his predictions (p.183-296) appear to be inconsistent with his later action in the convention. These advocate an increase of power in the national government, though later in the convention Randolph refused to sign the constitution, feeling that the restraints on the powers of the states were too great. This latter action left him free to act as he saw fit when the constitution should come before his state for adoption. When the time came, he saw that a rejection of the constitution would mean disunion, and he used all his powers in the Virginia ratifying convention in defence of ratification.

George Mason ranked third as a prophet in the convention with seventeen predictions to his credit. All of these are characteristic of his views. He believed slavery to be a menace to the country and was willing to give Congress the power to prohibit the trade. He perceived the rapidity with which slavery would increase, and was not deceived, as were others in the convention, into believing it would die out of itself (p.453). In contrast to this broad vision, was his narrow view of the west. He wished "if it were possible, by just means to prevent emigration to the western country" (p.295;300;495). Mr. Mason also left the convention without signing the constitution and his predictions (p.551-552) are consistent with this fact. Seven of his predictions have been entirely or partially fulfilled.

Hugh Williamson, William Richardson Davie, and Richard Dobbs Spaight, represented North Carolina with fourteen predictions. Hugh Williamson made five predictions with reference to the election
of the executive, which emphasize his opposition to the proposed system. He believed "it was pretty certain that we should at some time or other have a king; but he wished no precaution to be omitted that might postpone the event as long as possible." His predictions are tinged with local prejudices such as the south felt toward the north (p. 359; 490); and show that hostile attitude toward the growth of the west which was so prevalent among the members of the Convention (p. 326; 250). Two of Mr. Williamson's predictions have been partially fulfilled.

William Pierce said of William R. Davie, "He was silent in the convention, but his opinion was always respected." Most of his predictions advocate a strong senatorial branch. This was natural since he represented that group of states who wished the states to be sovereign. William Pierce said of Mr. Pinckney, "He is, although only twenty-four years of age, in possession of a great variety of knowledge. Government, law, history, and philosophy are his favorite studies.

# Mr. Pierce was in error. Charles Pinckney was twenty-nine years of age.
but he is intimately acquainted with every species of polite learning, and has a spirit of application and industry beyond all men."

The predictions of Charles Cotesworth Pinckney, six in number, are consistent with the principles he tried to support. He, like Charles Pinckney, had come into the convention with a desire to have a constitution formed retaining the power of the states (p.223-164). He believed that Congress should have no power to control the slave trade, but that this was a matter for each state to decide (p.459). It is no small honor to him that he yielded his prejudices, and agreed to compromise in order that a union might be formed which would include all of the states. Two of his predictions have been fulfilled.

John Rutledge represented the southern planter in his prediction favoring wealth as an estimate by which representation should be apportioned (p.297); and in his defense of slavery (p. 457). One of his seven predictions has been fulfilled.

Pierce Butler also made but one prediction which can be verified. This is not due to the fact that "as a politician or an orator, he has no pretentions to either", but to the fact that his predictions related to conditions for which the constitution made no provision.

Abraham Baldwin, of Georgia, though "well acquainted with books and characters", made but one prediction. This was of a general nature, prophesying an increasing "intercourse among the people of the states", and hence has been fulfilled.

As we review the list of men who made predictions in the convention, we find that Gouverneur Morris made the greatest number. He had thirty to his credit. James Madison, of Virginia, came second with twenty-four; George Mason, of the same state, third, with seventeen; and Elbridge Gerry, of Massachusetts, fourth, with fifteen predictions.

It is a significant fact that the five men who held the four highest places as successful prophets (that is, who made the highest number of predictions which can be verified) were the leaders in the framing of the constitution. It will be worth while to notice the most important service of these men. Alexander Hamilton ranks first, with five of his eight predictions fulfilled. Hamilton's relation to the constitution was less direct than that of the other four men since much of his important work had been accomplished before the convention met. This work began in 1780 when he had drawn up an outline of a national government strongly resembling the one finally established, and continued through his service in Congress where he had so admirably set forth plans for the revenue, commercial power, and the ratio of contribution. He did much to bring about the convention at Annapolis, and then the decisive one of 1787.

James Madison stood second with fourteen of his twenty-four predictions fulfilled. Since Madison is known as the "Father of the Constitution", it may be assumed that he held the largest
place in the convention. George Ticknor Curtis considers that his greatest service consisted in the answers he made to the objections of those who believed the assembly did not have the power to propose and frame a new constitution.\(^2\)

Since five of Benjamin Franklin's nine predictions were fulfilled, he stands third as a successful prophet. It is for his influence rather than for what he said that he is to be remembered in the convention. His great age, his long period of public service, and his eminence as a philosopher, philanthropist, and thinker made him beloved, reverenced, and respected. He used his influence to cool the heat of debate, check discussions which tended to result in permanent differences, and appeal for unanimity of action to save the union.

James Wilson and Gouverneur Morris tied for fourth place, each having had half of his predictions fulfilled. Mr. Wilson must be given credit for the fact that in the new government the people came to be represented in the ratio of their numbers instead of by states. He used his influence and efforts to elucidate and emphasize his opinion that when the states had become independent of Great Britain they had become so in their federated character and not as individual communities, and that the Articles of Confederation had been a violation of that principle. Mr. Morris attended the whole session of the convention with the exception of a few days in June. During all this time he put forth every effort to conciliate the differing delegates, exalt nationalism, and defeat state jealousies. In spite of his excellent work in these lines,

he is chiefly to be remembered as the author of the text of the constitution. It was he who drew it up in its final form and gave it that clearness and freedom from obscurity which have lessened the difficulties of interpretation of later days.

It is not strange that these five men should be the ones most able to predict the future of their country. They were the men most free from local prejudices and state jealousies, and most eager for a strong, national government promulgated by the people as the sovereign power. Since the realization of this has been the tendency and course of government and law since the convention, naturally those who looked toward this as their ideal would be the most successful prophets. These were the men too who best realized the weaknesses of the confederation. They had struggled to brace its tottering form until the people should realize that it never could stand alone. They were also the men who had been the most influential in organizing the convention, and had come to it with a stock of knowledge relating to all previous efforts in ancient and modern times to establish free institutions of government. From these former experiments they were prepared to deduct conclusions applicable to similar conditions in America.
Since the delegates in the convention speculated upon all subjects, the problem as to the method of classifying the predictions in order that they may have the greatest significance, presents itself. As one reads through the journal of the convention, at least seven methods of classification suggest themselves, which may be grouped under three general heads. There may be methods of classification according to the states from which the authors of the predictions came; second, a method determined by the opinions of the authors of the predictions, and, third, methods which are determined by the predictions themselves. All of the states except Rhode Island sent delegates to the convention. Since the states had been sovereign under the Articles of Confederation, the delegates, for the most part, had come to the convention, feeling it their duty to defend the interests of the particular state which they represented. No sooner had the debate commenced than the convention proved to be divided into parties, and each party threatened and predicted as to what would happen should the opposing faction get the power into its hands. There were the commercial states opposing the agricultural states; the small states against the large states; and the slave-holding states against the non-slave-holding states. From each of these groups were characteristic predictions.
The predictions from the commercial states came from New England, New York, and Maryland, who wished to give Congress large powers over commerce; those from the agricultural states were made by delegates from Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia, who wished the states to have some regulation over commerce. The following predictions will characterize these groups. Oliver Ellsworth, of Connecticut, said, "The power of regulating trade between the states will protect them against each other. Should this not be the case, the attempts of one to tax the produce of another passing through its hands, will force a direct exportation and defeat themselves". (p.454).

Hugh Williamson, of North Carolina, said, "If a majority of the northern states should push their regulations too far, the southern states would build ships for themselves". (p.490).

The opposition between the small and large states was still more bitter than that between the trading and agricultural states. The former wished a representation based upon states, while the latter desired that it be based upon population. A classification of the predictions based upon the factions would place those of the delegates from Connecticut, New Jersey, New Hampshire, Maryland, and Delaware in one group; and those from New York, Massachusetts, Pennsylvania, South Carolina, North Carolina, and Georgia in the other. The following prediction made by William Patterson of New Jersey is characteristic of the first group. "Give the large states an influence in proportion to their magnitude, and what be the consequence? Their ambition will be proportionally increased, and the small states will have everything". (p.176) James Madison's
prediction is representative of the second group. "The majority of states might still injure the majority of the people. In the first place, they could obstruct the wishes and interests of the majority. Secondly, they could extort measures repugnant to the wishes and interests of the majority. Thirdly, they could impose measures adverse thereto; as the second branch will probably exercise some great powers in which the first will not participate". (p.264).

In classifying the predictions according to whether their authors came from slave or free states, those of the delegates from Virginia, Maryland, South Carolina, North Carolina, and Georgia would fall in one group, and those of the seven remaining states in another. Charles Cotesworth Pinckney, representing the slave states, said, "The importation of slaves would be for the interest of the whole union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury". (p.459). Elbridge Gerry, of Massachusetts, said, "With regard to taxes on imposts, he conceived they would be more productive where there were no slaves than where there were, the consumption being greater". (p.305).

In attempting to classify the prediction according to any of these methods determined by the states from which their authors came, we meet with certain difficulties. First, these methods of classification are based upon the attitude of the states toward one subject only. For example, in a classification according to trading or agricultural states, the alignment is based on the attitude of the states toward commerce without considering
that the alignment is different on the subjects of slavery or representation. Though the predictions of the delegates from Pennsylvania and Georgia might be alike on the subject of commerce, they would vary on the subject of slave-holding. Secondly, it divides the predictions into two groups only as though they dealt with one subject, either commerce, slavery, or representation, instead of with innumerable subjects. Hence such a classification is not logical as far as the predictions alone are considered.

Thirdly, a classification based upon states disregards the individual views of the authors and assumes that all the delegates from one state believed and predicted the same things. Some examples will prove that this was not the case. John Lansing and Robert Yates of New York left the convention early because they disproved of giving Congress power over the states, while on the other hand Alexander Hamilton from the same state believed that if the powers of the national government "were limited at all, the rivalship of the states would gradually subvert it." James Madison, though from an agricultural state, wished Congress to regulate commerce. Both he and George Mason, though from a slave-holding state, wished Congress to have the right to legislate as it saw fit with reference to the importation of slaves.

A method of classification according to the opinions of the authors of the predictions would give two groups. In the first would be placed the predictions of those authors who believed in national sovereignty; and in the second the predictions of those who believed in state sovereignty. The predictions in this latter group were made by Oliver Ellsworth and Roger Sherman of
Connecticut, David Brearly and William Patterson from New Jersey, Gunning Bedford, John Dickinson, and George Read of Delaware, and Luther Martin of Maryland. The names of Edmund Randolph and George Mason of Virginia and Elbridge Gerry might be added to these since they refused to sign the constitution. They did not entirely approve of the system of government the constitution proposed, but their objections would have been withdrawn had the method of ratification which they desired been adopted. They wanted to allow the state conventions to make amendments upon which another general convention should take final action. The opinion of the remaining eighteen authors may be characterized by the prediction of Alexander Hamilton, "The more close the union of states, the more complete the authority of the whole, the less opportunity will be allowed to the stronger states to injure the weaker". (p.214).

In contrast to this, Gunning Bedford said, "The large states dare not dissolve the confederation. If they do, the small ones will find some foreign ally of more honor and good faith who will take them by the hand and do them justice" (p.268). While this method of classification is broader in its scope than a classification by states, it can be criticized. It also divides the predictions into but two broad classes, ignoring the many subjects which bear no relation to the form of government.

Two methods of classifying the predictions, as such, with no reference to author or state readily suggest themselves, one determined by their fulfilment or non-fulfilment, the other according to the department of government to which the prediction referred.
The first is suggested by the word "prediction" since prophecies always carry with them the idea of fulfillment or non-fulfillment. In the case of the predictions in the convention, we would have four divisions in this group, first, predictions that have been entirely and definitely fulfilled, such as, "This constitution will be much read and attended in Europe". (p.403). Second, those which have had no verification, as, "There was no probability that the number of future states would exceed that of the existing states". (p.310). Third, those which have been only partially fulfilled. This may be due to the fact that the prediction contains several statements, part of which have been fulfilled and part have not, or the prediction may have been fulfilled for a limited period of time only. The following example will illustrate a partially fulfilled prediction. "The number of states will also increase. Kentucky, Vermont, the Province of Maine, and Franklin will probably soon be added to the present number. He presumed also that some of the large states would be divided". (p.357). Fourth, that class of predictions which cannot be verified since they relate to conditions for which the constitution made no provision, such as, Elbridge Gerry's prediction relating to the election of the national executive by the national legislature. "There would be a constant intrigue kept up for appointment. Legislature and candidate would bargain and play into one another's hands. Votes would be given by the former under promises or expectations from the latter of recompensing them by services to members of the legislature or their friends". (p.144). A classification of the predictions determined by their verification would be entirely
mechanical, and would destroy much of the significance attached to them when they are considered with their authors and the subjects to which they refer.

A classification of the predictions determined by the departments of government to which they referred seems to be the most logical method since it eliminates practically all of the disadvantages of the other methods. In such a classification there would be four main divisions; first, the predictions which relate to the executive department; second, those which relate to the legislative department; third, those relating to the judicial department; and finally, miscellaneous predictions which deal with subjects unrelated to any of the departments of government. The predictions will naturally fall into subdivisions under these four general heads. Some of the advantages of this method of classification are: first, that it follows the order of the constitution in its making and in its finished form. Early in the convention the delegates decided that the national government should be composed of these three departments, and the remainder of the time was occupied with discussions upon the composition and powers which should belong to each department. The constitution in its finished form gives us the results of these discussions. A classification based upon the constitution gives us the views of the delegates upon the various provisions of the constitution in logical form. Second, such a classification reveals the parties in the convention. By turning to the predictions relating to the election and suffrage of the legislature, we may discover which authors represented the small states and which the large states. In the predictions relating to the powers of Congress we may dis-
who were slave state and who were free state advocates, as well as who represented the commercial states and who the agricultural states. In each department those supporting national sovereignty and those advocating state sovereignty may be detected. Third, this method shortens the process of verification, since an explanation of the fulfillment of one prediction may mean the non-fulfillment of another prediction relating to the same subject. Fourth, this method is more inclusive than any of the others, since with the exception of seventeen miscellaneous predictions, they each related to one of the three departments. Since this method seems to be the most logical and advantageous one, it will be the one used in discussing the predictions.
Chap. IV. Predictions relating to the Executive Department.

When the members of the convention of 1787 met, they readily agreed that the government should consist of three parts, the executive, legislative, and judiciary departments, but what the exact nature of these three departments should be gave occasion for much dispute, speculation, and prediction.

Naturally the first question which arose relating to each was how many persons it should contain. Even the executive department was the subject of discussion and prediction on this point. Some wished an executive council, composed of three members representing different sections of the country, while others held that there should be but a single executive officer. Pierce Butler favored the latter because if one man should be appointed, he would be responsible to the whole, and would be impartial to its interests. If three or more should be taken from as many districts, there would be a constant struggle for local advantages. This would be particularly mischievous in military matters (p.149). "Since one person was determined upon for the executive this prediction cannot be verified. Mr. Randolph opposed a single executive, because "the necessary confidence would never be reposed in a single magistrate. Appointments would generally be in favor of some inhabitant near the centre of the community, and consequently the remote parts would not be on an equal footing". (p.149). Elections have all been made from one section of the country; the eastern,
Virginia has furnished eight presidents and Ohio six. With the exception of Lincoln from Kentucky and Chester A. Arthur from Vermont, the remainder have been born in one of the original thirteen states. The "REMOTE" or western parts of the country have never given a president, yet they feel that they are on an "equal footing" with the east.

After it was determined that the executive power should be vested in one person, the question as to how he should be chosen followed. Four methods were discussed particularly: choice by the state executives, by the national legislature, by direct popular vote, and by indirect popular vote through electors. The consequences of each method were pointed out by its opponents.

Edmund Randolph opposed appointment by the state executives, because "the confidence of the people would not be secured by it to the national magistrate. The small states would lose all chance of an appointment from within themselves. Bad appointments would be made, the executives of the states being little conversant with characters not within their own small spheres. The state executives, too, notwithstanding their constitutional independence, being in fact dependent on the state legislatures, will generally be guided by the views of the latter, and prefer either favorites within the states, or such as may be expected will be most partial to the interests of the state. A national executive thus chosen will not be likely to defend with becoming vigilance and firmness the national rights against state encroachments. He could not suppose, either, that the executives would feel the interest in supporting the national executive, which had been imagined. They will not cherish the great oak which is to reduce them to paltry
shrubs". (p.175). This prediction together with those which follow relating to election by the national legislature and by direct popular vote cannot be verified since the Convention did not adopt those methods.

Elbridge Gerry said that in case the executive were appointed by the legislature "there would be a constant intrigue kept up for the appointment. The legislature and the candidates would bargain and play into one another hands. Votes would be given by the former under promises or expectations from the latter of re-compensing them by services to members of the legislature or their friends" (p.144). Pierce Butler said, "The two great evils to be avoided are cabal at home and influence from abroad. It will be difficult to avoid either if the election be made by the national legislature. On the other hand, the government should not be made so complex and unwieldy as to disgust the states. This would be the case if the election should be referred to the people." (p.365). Gouverneur Morris agreed, If the legislature elect, it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment" (p.322).

Charles Pinckney opposed these views. "They (the people) will be led by a few active and designing men. The most populous states, by combining in favor of the same individual, will be able to carry the appointment. The national legislature, being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them into execution" (p.323).

Elbridge Gerry opposed the election of the executive by the people because "the ignorance of the people would put it in the power of one set of men, dispersed through the Union and acting in
concert to delude them into any appointment. He observed that such a society existed in the order of the Cincinnati. They will, in fact, elect the chief magistrate in every instance, if the election be referred to the people". (p.367). Gouverneur Morris disagreed with him, "If the people should elect, they will never fail to prefer some man of distinguished character or services; some man, if he might so speak, of Continental reputation". (p.322).

Several objected to an election by the people on the ground that the small states would not be represented. It is likely that the predictions to this effect would have been partially fulfilled had this method of electing the executive been adopted, because even by our present system, the large states have a predominating influence. This is shown by the fact that since the first election of Jackson, no president has been chosen in opposition to the vote of both New York and Pennsylvania, and but five in opposition to the vote of either of them. Roger Sherman said, "The latter (the people) will never be sufficiently informed of characters and besides will never give a majority of votes to any one man. They will generally vote for some man in their own state and the largest state will have the best chance for the appointment" (p.322).

Hugh Williamson agreed, "The people will be sure to vote for some man in their own state; and the largest state will be sure to succeed. This will not be Virginia, however. Her slaves will have no suffrage. As the salary of the executive will be fixed and he will not be eligible a second time, these will not be such a dependence on the legislature as has been imagined" (p.324). In another discussion he said, "The principal objection against an election by the people seemed to be the disadvantage under which
it would place the small states" (p. 366). Charles Pinckney too feared the large states, "They (the people) will be led by a few active and designing men. The most populous states, by combining in favor of the same individual, will be able to carry their points. The national legislature, being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution" (p. 323).

The predictions relating to the election of the executive by electors must be tested by a consideration of the part which electors actually play in electing the president, rather than the part the Convention intended that the electors should play. The Convention intended that they should be a select body of men chosen in whatever manner the state legislatures should direct, who would meet in their respective states and cast their votes according to their own free and independent judgment. This actually happened in the case of the first president only. Since that time the electors have merely been the instruments of the political party for which they stand. As early as the election of 1796, men offered themselves as candidates for the electoral college, announcing that if elected they would vote for certain individuals. The unanimity of anti-federal electors in support of both Jefferson and Burr in the election of 1800, also, shows how quickly the scheme of independent free acting electors was discarded.

Since the electors do not determine their votes after election, Charles Pinckney's predictions have not been fulfilled. He said, "The electors will not have sufficient knowledge of the fittest men, and will be swayed by an attachment to the eminent
men of their respective states. Hence, secondly, the dispersion of the votes would leave the appointment with the Senate, and as the President's reappointment will depend on the Senate, he will be the mere creature of that body. Thirdly, he will combine with the Senate against the House of Representatives. Fourthly, this change in the mode of election was meant to get rid of the ineligibility of the President a second time, whereby he will become fixed for life under the auspices of the Senate" (p. 512). In another discussion he said, "The electors will be strangers to the several candidates and, of course, unable to decide on their comparative merits. It makes the executive re-eligible, which will endanger the public liberty. It makes the same body of men, which will, in fact, elect the President, his judges in case of impeachment" (p. 509). Mr. Pinckney had sufficient grounds for these predictions in 1787, when we remember that there were no telegraphs, telephones, railways, newspapers, or even party conventions to acquaint the public with the candidates. The narrow knowledge of the electors at that time may be shown by the fact that in the first election, with the exception of John Jay and George Clinton of New York and John Hancock of Massachusetts, all the "scattering" candidates for the vice-presidency were natives of the states which gave them votes. Georgia was able to find four of its own citizens, who were worthy to be placed second to Washington. With our present means of communication the whole life of each candidate is so well known to the party leaders and people that no one is elected to the presidency about whose integrity there is a suspicion.
James Wilson and Abraham Baldwin did not agree with Mr. Pinckney. The former said, "Continental characters will multiply as we more and more coalesce so as to enable the electors in every part of the Union to know and judge of them" (p. 509); and the latter, "The increasing intercourse among the people of the states would render important characters less and less unknown; and the Senate would consequently be less and less likely to have the eventual appointment thrown into their hands" (p. 509). The latter part of the prediction has been fulfilled if we substitute House of Representatives for "Senate", for the election of the president has been thrown into the former's hands but twice, in 1800 and in 1824. In 1800 there was an equal number of Republican votes for Jefferson and Burr; therefore, the House had to cast the deciding vote. In 1824, no candidate received a majority of the electoral vote, and the choice of one of the highest three was thrown upon the house.

Hugh Williamson made some predictions with reference to the electors which have been partially fulfilled. He said, "They would not be the most respectable citizens, but persons not occupied in the high offices of government. They would be liable to undue influence which might the more readily be practised as some of them will probably be in appointment six or eight months before the object of it comes on" (p. 338); and "he could see no advantage in the introduction of electors chosen by the people, who would stand in the same relation to them as the state legislatures, while the expedient would be attended with great trouble and expense" (p. 144). The electors are never "high" officers of the government since the constitution provides that "no senator representative or person holding any office of trust or profit under
the United States shall be appointed an elector". Neither is it necessary that they shall be distinguished citizens since they do not exercise their own judgment when they vote. Now the office of elector is considered a meritorial honor to be given to individuals who are willing to make large contributions to campaign funds. Although the electors are not chosen six or eight months "before the object of it comes on", they are chosen two and a half months before this. This does not make them "liable to undue influence" as they have determined their choice before they are appointed. The electoral college does make a great deal of expense.

Elbridge approved of electors, using argument contrary to Mr. Williamson's, "The election of the executive magistrate will be considered as of vast importance, and will create great earnestness. The best men, the governors of the states, will not hold it derogatory from their character to be electors"(p.358). There is no doubt that the first part of this prediction has been fulfilled, but the second part is disproved by the fulfillment of Mr. Williamson's prediction.

Since vesting the executive power in a president was a novel experience for men who had been accustomed to a king, we should expect them to want this power more or less defined, especially as to such an important matter as the making of peace or war. Pierce Butler favored vesting the power to make war in the president "who will have all the requisite qualities, and will not make war but when the nation will support it"(p.439). Charles Pinckney was afraid that if the executive power should extend to peace and war "it would render the executive a monarchy of the worst kind, to wit, an elective one"(p.140). James Madison agreed with Mr. Pinckney saying, "that the President would necessarily derive so much
power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace" (p. 524). These predictions have not been fulfilled.

Edmund Randolph predicted that "the executive will have more influence over the Senate than over the House of Representatives" (p. 419). This has proven to be the case probably because the senators have reserved to themselves functions of government which bring them in closer contact with the president; namely, their power to confirm or reject his nominations for executive officials, a share in his treaty-making power, and their right to impeach him.

Many of the members of the Convention felt that the powers of the president would be so extensive that he would at some time become a king. Benjamin Franklin made two predictions to this effect, "I am apprehensive, therefore, perhaps too apprehensive, that the government of these states may in future times end in a monarchy" (p. 146), and "The first man put at the helm will be a good one. Nobody knows what sort may come afterward. The executive will always be increasing here until it ends in a monarchy" (p. 154). Hugh Williamson and George Mason agreed. The former said, "Another objection against a single magistrate is that he will be an elective king, and feel the spirit of one. He will spare no pains to keep himself in for life and will then lay a train for the succession of his children. It was pretty certain that we should at some time or other have a king" (p. 359); and the latter, "It would end either in monarchy or tyrannical aristocracy, which, he was in doubt, but one or other, he was sure" (p. 552). It is not surprising that these men feared this outcome for, as
has been shown, they based their predictions on the history of former republics all of which had ended in monarchies or tyrannical aristocracies. One hundred and twenty-seven years have passed since that time and our nation is still a republic. No president has yet broken the precedent set by Washington when he did not serve a third term.

To guard against the usurpation of too much power by the executive, the Convention decided to give the Senate power to impeach him providing "two-thirds of the members concur". Gouverneur Morris opposed this, "It will hold him in such dependence that he will be no check on the legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction of some leading demagogue in the legislature" (p. 335). That Mr. Morris' prediction has not been fulfilled is shown by the extent to which the presidents have used their veto power "to check the legislature". Only seven presidents have lived through their terms without using this power, John Adams, Thomas Jefferson, and John Quincy Adams, W. H. Harrison, Zachary Taylor, Millard Fillmore, and James Garfield. From the organization of the government to the end of President Roosevelt's administration, the number of bills vetoed was about five hundred and fifty, which would be an average of 90 per session of Congress.

Charles Pinckney also opposed impeachment by the Senate, because "if he opposes a favorite law, the two Houses will combine against him, and under the influence heat and faction throw him out of office" (p. 528). The nearest approach to a fulfillment of this

# Beard, Charles A., American Government and Politics, p. 204.
prediction was in 1868 when both houses in Congress did attempt to "throw" Andrew Johnson "out of office", because he had opposed their plans for reconstruction; but failed to do so because the majority lacked one vote of having the necessary two-thirds. Since no president has been impeached, the prediction of Mr. Morris that "an election of every four years will prevent mal-administration"(p.528) seems to be true. Another of Gouverneur Morris' predictions relating to impeachment to be tried before the judges cannot be verified as that method was not adopted. "The latter (the executive) would in such cases be drawn into intrigues with the legislature and an impartial trial would be frustrated. As they would be much about the seat of government, they might even be previously consulted and arrangements might be made for the prosecution of the executive"(p.329).

A very powerful influence in determining the action of the president is the opinion of his cabinet. Through them he can learn the feeling of the country on important questions. The federal convention made no provision for such a body, although the convention did discuss the matter. In spite of their decision, Washington regarded the four chief executive officials, including the Attorney general, as his confidential advisers, and by so doing, set a precedent since followed by all his successors. For this reason the predictions made by members of the convention with reference to a cabinet can be verified. Benjamin Franklin said, "A council would not only be a check on a bad president, but be a relief to a good one"(p.525). One conspicuous example of the influence of strong cabinet officers upon a weak president is that of Andrew Johnson. When he first took up
his duties he was inclined to be narrow and very hostile in his views toward the South, but through the influence of Seward and others of his cabinet, his reconstruction policy became very similar to that of Lincoln. That the strong presidents consider their cabinets a "relief" may be judged from the frequency and regularity with which they consult them.

Charles Pinckney opposed a council saying, "Give him an able council and it will thwart him; a weak one, and he will shelter himself under their sanction" (p. 442). That this has not been the case is shown by the fact that cabinet members themselves recognize the authority of the president to such an extent that when they can no longer cooperate with him they resign to avoid being removed. Except in the two following instances, the power of removal has prevented the need of using it. In 1800 secretary of state, Timothy Pickering, was intriguing against President Adams, whereupon the latter requested his resignation. He failed to comply and was forced out. In 1833, Secretary William J. Duane, refused to remove the government deposits from the United States Bank, whereupon President Jackson dismissed him and put Roger B. Taney in his place. At only one time in our history has a president been thwarted by a cabinet member. In 1867, President Johnson suspended and tried to remove Edwin Stanton, his Secretary of War. He failed because of the Tenure of Office Act, which threw the removal into the hands of the Senate.

Even the matter of the president's salary was the subject of predictions. These were made by Dr. Franklin who seemed to be the chief opponent to remunerating the government officials. He was so opposed that he had prepared a long paper on the subject.
which he introduced by a motion "that what related to the compensation for the services of the executive be postponed in order to substitute 'whose necessary expenses shall be defrayed, but who shall receive no salary, stipend, fee, or reward whatsoever for their services'". "If they received a salary," he continued, "of what kind are the men that will strive for this profitable preeminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong and indefatigable activity in their selfish pursuits. These will thrust themselves into your government and be your rulers. . . . . . Their vanquished competitors of the same spirit and from the same motives will be perpetually endeavoring to distress their administration, thwart their measures, and render them odious to the people" (p. 145). Thus far we can cite no presidents who have sought the office for the salary nor none who have been harassed by competitors who wished it for that reason.

Dr. Franklin continued further, "Though we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the ruler that the rulers in return may be able to give more to them" (p. 145). This prediction has not been fulfilled, or at least the increase in salary was slow. The first Congress placed the president's salary at $25,000, and this was not changed until 1871, when it was increased to $50,000, and again
in 1909 to $75,000. In addition to his salary, the president is furnished an executive mansion, executive offices, and certain additional allowances, clerks, travelling expenses, etc. All of these things brought the appropriation bill for 1909 up to $329,420.# This would probably have seemed a fabulous sum to Franklin, but is no more than enough to support the president and his family in style and dignity worthy of their high position.

Since the Vice-president becomes the executive officer through the death or inability of the president, we may notice the prediction relating to him in this chapter. Roger Sherman said, "If the Vice-president were not to be president of the Senate, he would be without employment; and some member, by being made president, must be deprived of his vote, unless when an equal division of votes might happen in the Senate, which be but seldom" (p. 522). Except in case of the death or inability of the president the vice-president has no duties except that of presiding officer of the Senate. As such he has no vote except in case of a tie, and has no special power through his office. Five times, however, in our history the vice-president has become president through the president's death. By the death of Harrison, April 4, 1841, Tyler became president; by the death of Taylor, Millard Fillmore became president; by the assassination and death of Lincoln, April 15, 1865, of Garfield, September 19, 1881, and of McKinley, September 14, 1901, Andrew Johnson, Chester A. Arthur, and Theodore Roosevelt, respectively, became Presidents.

# Beard, Charles A., American Government and Politics, p. 205.
Chap. V. Predictions relating to the Legislative Department.

Of the 215 predictions made in the convention, 133 relate to the legislative department. Throughout the discussions on this department, state feeling predominated. The small states feared the large ones; the large ones wanted their large populations represented; the Atlantic states feared "the new states which would arise to the west"; the northern states were jealous of their commercial interests; and the southern states wanted their slaves considered.

"That the national legislature ought to consist of two branches was agreed to without debate or dissent except that of Pennsylvania" (p. 135), but numerous predictions arose out of the discussions as to the choice of the members of the body as a whole and with reference to the choice of each branch. Most of the predictions with reference to the election of the members of the legislature as a whole cannot be verified, as no general method for both houses was adopted. William Patterson said, "Give the large states an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionately increased, and the small states will have everything to fear" (p. 176). David Brearly agreed in favoring an equal vote for each state, otherwise, "the large states, by which he meant Massachusetts, Pennsylvania, and Virginia, will carry everything before them" (p. 175). Alexander Hamilton had no fear of a combin-
ation of large states against small ones. "They were separated from each other by distance of place and equally so by all the peculiarities which distinguish the interest of one state from those of another. No combination, therefore, could be dreaded. In the second place, as there was a gradation in the states, from Virginia, the largest, down to Delaware, the smallest, it would always happen that ambitious combinations among a few states might and would be counteracted by defensive combinations of greater extent among the rest. The more close the union of the states, and the more complete the authority of the whole, the less opportunity will be allowed to the stronger states to injure the weaker" (p. 213-214). Hamilton's prediction was more reasonable than those of Patterson and Brearly, because the alignment in the discussions in the separate houses has not been determined by the size of the state. The fact that Connecticut and Georgia are small state has not given them common interest, but rather differences in location, climate, and industrial development have tended to draw them apart. Connecticut has more interests in common with Massachusetts, a large state, than with Georgia, a small one; while the last has more interest in common with Virginia, another large state. One prediction was made with reference to the method of choosing the legislature, which was adopted. James Wilson said, "If one bunch of it should be chosen by the legislatures, and the other by the people, the two branches will rest on different foundations and dissensions will naturally arise between them" (p. 167). This prediction is partially true in that collisions do often occur between the two houses. One
The house is likely to alter the bills that come from the other and the mere fact that a bill has passed in one house does not induce the other to pass it. "Deadlocks, however, and disagreements over serious issues, which stop the machinery of administration, are not common". If each house persists in its own view a committee of reference is appointed by each house which meets to settle the difficulty, usually by a compromise.

Three methods of choosing the Senate, the second branch of the legislature, "furnished occasions for predictions, a choice by the state legislature, by the people, and by electors chosen for the purpose." With reference to the first method, Elbridge Gerry said, "The elections, being carried through this refinement, will be most likely to provide some check in favor of the commercial interest against the landed; without which, oppression will take place, and no free government can last long where that is the case" (p.168). Mr. Gerry's prediction has been fulfilled to the extent that the senate has protected the commercial interests. The general impression is, however, that this has been done to such an extent as to be oppressive to the landed interests. Many of the members of the senate are connected with powerful economic interest, and consequently their interest lies with the capitalist class. Some have even been accused of accepting bribes from corporations in return for which legislation, favorable to the latter, was to be promoted. Charles Cotesworth Pinckney said, "The state legislatures, also, would be more jealous and more ready to thwart the national government if excluded from a participation in it" (p.164). This prediction may be fulfilled since the legislatures no longer choose the senators. James Wilson

#Bryce, James, The American Commonwealth, Vol. I, p. 188.
said, "The election of the second branch by the legislatures will introduce and cherish local interest and local prejudices" (p. 239).

James A. was for an election by the people in large districts which would be most likely to obtain men of intelligence and uprightness; subdividing the districts only for the accommodation of voters" (p. 169). Elbridge Gerry thought there "three powerful objections against elections by district; first, it is impracticable; the people cannot be brought together to one place for the purpose; and, whether brought to the same place or not, numberless frauds would be unavoidable. Secondly, small states, forming part of the same district with a large one, or a large part of a large one, would have no chance of gaining an appointment for its citizens of merit. Thirdly, a new source of discord would be opened between different parts of the same district" (p. 169-70).

Time will test these predictions, since on May 31, 1913, the constitutional amendment providing for the election of senators by popular vote went into effect.

One prediction was made with reference to the appointment of senators by electors chosen by the people for that purpose. William R. Davie thought it "liable to an insuperable difficulty. The larger counties or districts, thrown into a general district, would certainly prevail over the smaller counties or districts, and merit in the latter would be excluded altogether. The fact was that the local prejudices and interests which could not be denied to exist, would find their way into the national council, whether the representatives should be chosen by the legislatures or by the people themselves" (p. 265-6). Oliver Ellsworth agreed to the latter part of Mr. Davie's prediction. "Whoever chooses the member he will be a citizen of the state he is to
represent, and will feel the same spirit and act the same part, whether he be appointed by the people or the legislature" (p. 239). Enough time has not yet elapsed since senators have been elected by the people to verify these predictions.

The suffrage in the senate as well as the method of choosing its members furnished a bone of contention for the large and small states. Charles Pinckney said, "If the states are equally represented in the Senate, so as to give no advantage to the large states, the power will, notwithstanding, be safe, as the small have their all at stake in such cases as well as the large states. It would be singular for one authority to make war and another peace" (p. 438). Roger Sherman said, "An equal vote in the second branch would be most likely to give it vigor. The small states have more vigor in their governments than the large ones; the more influence, therefore, the large have, the weaker will be the government. In the large states it will be most difficult to collect the real and fair sense of the people; fallacy and undue influence will be practised with most success; and improper men will most easily get into office. If they vote by states in the second branch, and each state has an equal vote, there must be always a majority of states, as well as a majority of the people on the side of public measures, and the government will have decision and efficacy. If this be not the case in the second branch, there may be a majority of states against a public measure; and the difficulty of compelling them to abide by the public determination will render the government feeble than it has ever yet been" (p. 285). James Madison did not agree with Mr. Pinckney.
and Mr. Sherman. "The majority of states might still injure the majority of the people. In the first place, they could obstruct the wishes and interests of the majority. Secondly, they could extort measures repugnant to the wishes and interest of the majority. Thirdly, they could impose measures adverse thereto; as the second branch will probably exercise some great powers in which the first will not participate" (p. 264). Mr. Madison's prediction, and not those of Mr. Pinckney and Mr. Sherman, has been fulfilled, since the majority of the states does not represent the majority of the people. Nine eastern states, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, New York, and Pennsylvania, with a population of over 21,000,000 (1900) have only eighteen senators, while nine western states, Montana, Wyoming, Colorado, Utah, Idaho, Washington, Nevada, Oregon, and California with a population of less than 6,000,000, have the same number. It is possible to select fifteen small states with about 5,000,000 inhabitants, possessing fifteen times the weight of New York in the Senate, with 7,000,000.

If New York were entitled to the same proportional representation in the Senate as Nevada (2 for every 430,572 people), she would have four hundred and twenty (1910). Thus we see that if the states did align themselves according to size, the small states would have everything to gain. The constitution provided for the fulfillment of the latter part of Mr. Madison's prediction by bestowing upon the senate three rights not given the representatives, the sole power to try impeachments, the power of approving

treaties, and that of confirming nominations to office submitted by the president.

The number of members which the senate should contain also lead to several predictions. Hugh Williamson objected to a great number because "the distant states will not be on an equal footing with the nearer states. The latter can more easily send and support their ablest citizens" (p.357). Since the constitution provides that the salary of the senators shall be paid from the national treasury, the burden does not fall on the states. Nathaniel Gorham also favored a small number because "the number of states will also increase. Kentucky, Vermont, the Province of Maine, and Franklin, will probably soon be added to the present number. He presumed also that some of the large states would be divided. The strength of the general government will be not in the largeness, but the smallness of the states" (p.357). This prediction has been partially fulfilled. The number of states has increased from thirteen in 1787 to forty-eight in 1915. Kentucky was admitted to the union in 1792, Vermont in 1791, and Maine in 1820, but Franklin never became a state. In 1788 its government was suppressed and in 1790 the land was ceded to the United States and later became a part of Tennessee. None of the large states were divided until 1863, when the northwestern part of Virginia became West Virginia. Roger 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" (p.310). This prediction was wrong, since by 1845 the number of states had doubled, and now is more than three times the original number.
Benjamin Franklin said, "There were in it (the convention) a number of young men who would probably be of the senate" (p. 246). Out of the twenty-two men composing the first senate, half had been members of the convention. These were John Langdon, Caleb Strong, William Samuel Johnson, Oliver Ellsworth, Rufus King, William Patterson, Robert Morris, Richard Bassett, George Read, Pierce Butler, and William Few.

Three predictions were made with reference to the term of the senators. James Wilson said, "As one-third go out triennially, there would always be three divisions holding their places from unequal times, and consequently acting under the influence of different impulses" (p. 245). This is the case according to the provision in the constitution relating to the terms of senators. Charles Cotesworth Pinckney said, "If the senators should be appointed for a long term, they would settle in the state where they exercised their functions, and would in a little time be rather the representatives of that, than of the state appointing them" (p. 242). The means of communication are such today that though a senator does reside in Washington, he may still keep in touch with his own state. George Mason said, "They are to be chosen by the state for six years, will probably settle themselves at the seat of government, will pursue schemes for their own aggrandisement, will be able, by wearying out the House of Representatives, and taking advantage of their impatience at the close of a long session to extort measures for that purpose" (p. 415). No doubt, each house has tried to "extort measures" from the other in this way, and it would be unsafe to accuse the senate alone of so doing.
Various predictions were made with reference to the selection and apportionment of members of the house of representatives. Charles Cotesworth Pinckney preferred "an election in such manner as the legislature of each state should direct. He urged, first, that this liberty would be give more satisfaction as the legislatures could then accommodate the mode to the convenience and opinions of the people; secondly, that it would avoid the undue influence of large counties, which would prevail if the elections were to be made in districts, as must be intended by the report of the committee; thirdly, that otherwise, disputed elections must be referred to the general legislature, which would be attended with intolerable expense and trouble to the distant parts of the republic"(p.223). The mode of election was not left to the legislatures, but the constitution specifies that election shall be by the people. Until 1842, however, the legislature of each state could determine the method of electing by the people. At that time Congress passed a bill, providing "that in every case where a state is entitled to more than one representative, the number to which each state shall be entitled under this apportionment shall be elected by districts composed of contiguous territory, equal in number to the number of representatives to which said state may be entitled. No one district electing more than one representative". Although it is intended by this act that each district shall contain an equal number of people, yet, as Mr. Pinckney predicted, the district system does give undue influence to large counties, since in the formation of districts, local units, counties, townships, and city blocks, must be recognized. The chief fault of the district system,
however, comes from party control, a thing which Pinckney did not anticipate. The majority party in each state legislature desires to secure as many of its members in Congress as possible, and hence creates inequalities for that purpose. For example, the fifteenth congressional district (Republican) in New York (in 1905) had 165,701 inhabitants, while the eighteenth district (Democrat) had 450,000 inhabitants. Contested elections are not referred to the general legislature, as Mr. Pinckney supposed they would be, but each house is made the judge of the election returns and qualifications of its own members. John Francis Mercer also opposed election by the people. "The people cannot know and judge of the characters of candidates. The worst possible choice will be made. He quoted the case of the Senate in Virginia as an example in point. The people in towns can unite their vote in favor of one favorite, and by that means prevail over the people of the country who, being dispersed, will scatter their votes among a variety of candidates" (p. 388). Modern means of communication make it possible for the people to know about the candidates, especially since, according to custom, with very few exceptions, the individual is a resident of the district by which he is chosen. The towns do not unite against the country, but rather both town and country divide according to party lines.

Gouverneur Morris and John Dickinson favored limiting the suffrage for the election of representatives to freeholders. Give the votes to the people who have no property, and they will.

Ibid. p. 235.
sell them to the rich who will be able to buy them. The time is not distant when this country will abound with mechanics and manufacturers, who will receive their bread from their employers" (p.386). Mr. Dickinson thought it a "necessary defence against the dangerous influence of those multitudes without property and without principle with which our country, like all others, will in time abound. The great mass of our citizens is composed at this time of freeholders, and will be pleased with it"(p.386). These predictions have been partially fulfilled. This country does abound with mechanics and manufacturers to such an extent that they now almost equal the agricultural class. In 1910, the former represented 27.9 percent of the total occupied population in the United States, while the latter represented 33.2 percent, only 5.3 percent more. It cannot be said, however, that because this class is without property that they are without principle.

As Mr. Dickinson said, "the great mass of citizens" did prefer that the suffrage be restricted to freeholders. The constitution provided that the electors of the representatives in Congress should have "the most numerous branch of the state legislature", and we find that in every one of the original states, the payment of taxes on the ownership of real or personal property varying amount from $33 to $200 was required.

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James Madison was undecided. He said, "In future times a great majority of the people will not only be without landed, but any other sort of property. These will either combine under the influence to their common situation, in which case the rights of property and the public liberty will not be secure in their hands, or, what is more probable, they will become the tools of opulence and ambition; in which case, there will be equal danger on another side" (p. 387). Although the wealth of the United States is calculated to be very unevenly distributed (one percent of the families owning ninety-one percent), yet less than half the families are supposed to be propertyless. There is a tendency to limit any evil influence this property class might have by restricting the suffrage to such as are United States citizens, and know enough of the rudiments of an education to enable them to defend their own interests. John Rutledge and Nathaniel Gorham disapproved of "restraining the right of suffrage to freeholders". The former said, "It would create division among the people; and make enemies of all those who should be excluded". The latter said, "The people have been long accustomed to the right in various parts of America, and will never allow it to be abridged" (p. 389). The number of states which had property qualifications disproves these statements, yet that these became increasingly unpopular is shown by the fact that with few exceptions they have all disappeared. Pennsylvania still requires her voters to be contributors in some amount to state and county taxes; Louisiana and South Carolina require that they own $300 worth of property, but provide alternatives to this qualification.
The discussion of the apportionment of representatives lead to various predictions with reference to the future population of the country. Rufus King thought that "the ratio of representation (one for every forty thousand inhabitants) could not be safely fixed, since in a century and a half our computed increase of population would carry the number of representatives to an enormous excess" (p. 280). This prediction has been fulfilled in less than a century and a half. By 1840, the number of representatives had increased to such an extent that the ratio of population to each representative was raised from 30,000 to 70,680. Since that time the ratio has been raised with each census, but in spite of this fact the house has grown from sixty-five members in 1790 to four hundred thirty-five in 1915. James Madison agreed with Mr. King, "The future increase of population, if the union should be permanent, will render the number of representatives excessive" (p. 392). Nathaniel Gorham questioned this. "It is not to be supposed that the government will last so long as to produce this effect. Can it be supposed that this vast country, including the western territory, will, one hundred and fifty years hence, remain one nation?" (p. 392). Though this country has not yet passed one hundred and fifty years, it has remained one nation long enough to grow in population from 4,000,000 in 1790 to 98,646,491 in 1914.

State jealousy also is clearly brought out in the discussion over apportionment. Gouverneur Morris said, "If the southern states get the power into their hands, and be joined, as they will be, with the interior country, they will inevitably bring on a war with Spain for the interior country. The interior country,
having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the northern and middle states will have against this danger. It has been said that North Carolina, South Carolina, and Georgia only, will in a little time have a majority of the people of America" (p.308). Contrary to Mr. Morris' fears, these southern states have never had a majority of the population and now contain but three percent of the total population in the United States.

Gouverneur Morris and George Mason, both, predicted an increase of the western people. The former said, "In time the western people would come to outnumber the Atlantic States"(p.294). The term "western" is indefinite, but by it Mr. Morris probably meant all but the original thirteen states. His prediction has not been fulfilled since the population of the new states is still but a little half that of the old. Mr. Mason said, "In time, they would be both more numerous and more wealthy than their Atlantic brethren. The extent and fertility of their soil made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands"(p.295). James Madison said, "The extent and fertility of the western soil would, for a long time, give to agriculture a preference over manufactures. Whenever the Mississippi should be opened to them (which would, of necessity, be the case as soon as their population would subject them to any considerable share of the public burden), imposts on their trade would be collected with less expense and greater certainty than on that of the Atlantic States"(p.299). If we may judge the wealth
of a state by the value of its industrial output, the "western" states are not more wealthy than the Atlantic states since the industrial output of the latter is 56 percent of the total. Spain did deprive the west of the natural outlet for their productions until 1795, when she grudgingly allowed them the right of free navigation to the sea. In 1800 Spain ceded her land known as Louisiana to France and at the same time the Spanish authorities at New Orleans deprived the Americans of their right of depositing their goods at that city. President Jefferson saw that something would have to be done and finally succeeded (1803) in purchasing Louisiana, which gave the United States the control of the Mississippi basin. Mr. Mason also said, "The legislature would cease to be the representatives of the people. It would continue so no longer than the states now containing the majority of the people should retain that majority. As soon as the southern and western population should predominate, which must happen in a few years, the power would be in the hands of the minority, unless provided for by the constitution (p. 300). As has been shown, the southern and western populations do not predominate.

Gouverneur Morris, Elbridge Gerry, Hugh Williamson, and John Rutledge wanted the representation of the western states to be limited. The first said, "The new states will know less of the public interest in many respects different; in particular, will be little scrupulous of involving the community in wars, the burdens and operations of which would fall chiefly on the maritime

# Computed from Leroy-Beaulieu, Pierre, The United States in the Twentieth Century, p. 220.
states" (p.279); also, "they would not be able to furnish men equally enlightened to share in the administration of our common interests" (p.298). By examining the records of representatives from the west, we find that for the most part, they are educated equally as well as those from the east, and that they do have an interest in national affairs. The western states have involved the country in no wars. Mr. Gerry said, "They will, if they acquire power, like all men, abuse it. They will oppress commerce, and drain our wealth into the western country" (p.310). Mr. Williamson said, "They would be small states; they would be poor states; they would be unable to pay in proportion to their numbers, their distance from market rendering the produce of their labor less valuable; they would consequently be tempted to combine for the purpose of laying burdens on commerce and consumption, which would fall with greater weight on the old states" (p.250). John Rutledge said, "The western states will not be able to contribute in proportion to their numbers; they should, therefore, not be represented in that proportion. The Atlantic States will not concur in such a plan" (p.297).

In order to keep the representation in proportion to the population, it would be necessary to take a census at stated intervals. Edmund Randolph thought this ought to be done under the direction of the general legislature, because "the states will be too much interested to take an impartial one for themselves" (p.296). The taking of the census was not left in the hands of the states, but is the work of the Bureau of the Census, a part of the national Department of Commerce.
Some of the members of the convention wished to restrict the representatives by making them ineligible to other offices during the term of service and for one year after. George Mason said, "If the members of the legislature are disqualified, still the honors of the state will induce those who aspire to them to enter that service, as the field in which they can best display and improve their talents, and lay the train for their subsequent advancement" (p. 232). Contrary to this prediction the house does not induce men of ambition to enter its ranks. They cannot "display and improve their talents" because they are enslaved by the rules of procedure and also by their constituencies. The chances of advancement to higher offices are small. Few get into the Senate; presidents are not chosen from the house, nor even heads of departments, only one member of President Taft's cabinet (1911) having sat in the house. James Madison said, "Nor would the partialities of such bodies be obviated by disqualifying their own members. Candidates for office would hover round the seat of government, or be found among the residents there and practice all the means of courting the favor of the members" (p. 232). During the first forty years of administration this prediction was not fulfilled, but after that time hordes of office seekers gathered at Washington after each presidential election clamoring for some office as a reward for partisan service rendered during the campaign. No effective reform was carried out to check this evil until 1871 when the first comprehensive and detailed civil service act became a law. Since that time successive presidents have extended the competitive system
until it now covers two-thirds of the entire executive civil service of the federal government. Gouverneur Morris said, "The ineligibility of members to office would lessen the influence of the executive. If they cannot be appointed themselves, the executive will appoint their relations and friends, retaining the vice and votes of the members for his purpose in the legislature" (p. 505). As has been shown above, this was fulfilled. Rufus King and James Wilson opposed the measure. The former said, "Such a restriction of the members would discourage merit. It would give a pretext to the executive for bad appointments as he might always plead this as a bar to the choice he wished to have made" (p. 229). Although the members of the legislature were not made ineligible the year after the term of their service, they were made so during the term. This has not had the effect Mr. King predicted, since the difficulty has been overcome by the appointed member resigning his position in the house or by his carrying on the affairs of the department without an appointment and without compensation, as did Samuel Smith, a Maryland congressman in Jefferson's first administration. Mr. Wilson thought such a restriction would have "the fatal consequence in time of war of rendering perhaps the best commanders ineligible" (p. 229). This restriction has not proved serious, perhaps because, as Roger said, "Men of abilities will increase as the country grows more populous, and as the means of education are more diffused" (p. 423). John Rutledge and George Mason thought a residence of which seven years in the state from the member was elected should be

required. Mr. Rutledge said, "An emigrant from New England or South Carolina or Georgia would know little of its affairs and could not be supposed to acquire a thorough knowledge in less time" (p. 389). No time requirement as to residence in the state was made by the constitution, but with our present means of communication an emigrant from one state to another is expected to acquire a knowledge of local affairs in much less time than seven years. Mr. Mason said, "The great houses of British merchants would spare no pains to insinuate the instruments of their views into the government" (p. 414). James Madison thought, "If bribery was to be practiced by foreign powers, it would not be attempted among the electors, but among the elected and among natives having full confidence of the people, not among strangers who would be regarded with a jealous eye" (p. 412).

The term for members of the house of representatives furnished several predictions. Elbridge Gerry said, "The people of New England will never give up the point of annual elections" (p. 184). They did since they ratified the constitution. James Madison felt that annual elections would be inconvenient to the representatives, as "they would have to travel seven or eight hundred miles from the distant parts of the Union and would probable not be allowed even a reimbursement of their expenses. Besides, none of those who wished to be reelected would remain at the seat of government, confiding that their absence would not affect them" (p. 225). "One year will be almost consumed in preparing for, and travelling to and from, the seat of National business" (p. 184). Some of the representatives now travel twice
eight hundred miles to the seat of government, but the national government allows them "reimbursement for their expenses"; they receive mileage expenses to the amount of twenty cents per mile to and from the seat of the government. It only takes them a rather few days not than a year.

The debates with reference to the salaries of members of Congress were based on the question as to whether they should be paid by the states or the nation. Pierce Butler "contended for payment by the states, particularly in the case of the Senate, who will be so long out of their respective states, that they will lose sight of their constituents unless dependent on them for their support" (p. 425). Although it is the general opinion that the Senate has been defective as a representative body, this is not accredited to the fact that the states do not pay their members. Hugh Williamson agreed with Mr. Butler, reminding "the House of the prospect of new states to the westward. They would be too poor, would pay too little into the common treasure, and would have a different interest from the old states. He did not think, therefore, that the latter ought to pay the expenses of men who would be employed in thwarting their measures and interests" (p. 226). James Madison "thought the members of the legislature too much interested to ascertain their own compensation. It would be indecent to put their hands into the public purse for the sake of their own pockets" (p. 227). The constitution left Congress to determine the salaries of its members. That few have felt it "indecent to put their hands into the public
purse" is best shown by the "salary grab" act of March 3, 1873. At this time Congress voted an increase in the salaries of the president, vice president, members of the cabinet, justices of the supreme court, speaker of the house, and members of congress. It raised the salary of Congressmen from $5000 to $7500. In the case of the other officers the law was to go into effect March 4, 1873, but it was made to apply to members of Congress passing the measure, who thus voted themselves a bonus of $5000 each.

Alexander Hamilton said, "The moderate wages for the first branch (house of representatives) could only be a bait to little demagogues. Three dollars, or thereabouts, he supposed, would be the utmost. The Senate, he feared, from a similar cause, would be filled by certain undertakers, who wish for particular offices under the government" (p. 202). Contrary to this prediction the salary of members of Congress has never been as low as three dollars per diem. From 1789 to 1817 it was six dollars per diem; from 1817 to 1855 eight dollars. On March 19, 1816 an act was passed for a salary of $1500 per year which was repealed because of popular opposition. In 1855, a salary of $3000 was voted which was raised to $5000 in 1865. As has been said, in 1873, this was raised to $7500, but the act was repealed at the next session. In 1907 it was again raised to $7500 where it stands at the present time. Though this may seem like a high salary, it is not because living expenses are high at Washington. "Not infrequently a member has to quit public life," as did ex-Speaker

Reed, frankly avowing that his duty to his family required his return to the practice of his profession in order to acquire a more adequate income. Hence the tendency is as Mr. Hamilton predicted.

Where, when, and how frequently the legislature should meet were the subjects for several predictions. James Madison said, "The necessity of a central residence of the government would be much greater under the new than under the old government. The members of the new government would be more numerous. They would be taken more from the interior parts of the states; they would not, like members of the present Congress, come so often from the distant states by water. As the powers and objects of the new government would be far greater than heretofore, more private individuals would have business calling them to the seat of it; and it was more necessary that the government should be in that position from which it could contemplate with the most equal eye, and sympathize most equally with, every part of the nation" (p. 40). This prediction has all been fulfilled. The members of the new government were more numerous than those of the old. The congress under the Articles of Confederation had but one house composed of not more than seven nor less than two delegates from each state. The new Congress had two houses; one with a representation according to the population; the other composed of two members from

each state. This has resulted in one house of 435 members and another of 96. As new states have been added members have been chosen from the interior, and the powers and business of the government have increased. John Francis Mercer said, "It will serve no purpose to require the two houses at their first meeting to fix on a place. They will never agree" (p. 410). This prediction has been verified. At the first meeting, the members of Congress could not agree on a place for a national capital, and the matter lay over until 1790. Then Hamilton arranged a compromise with Jefferson whereby southern votes were secured for the assumption of state debts, and northern votes for a southern capital.

As to when the legislature should meet, Oliver Ellsworth said, "the summer will interfere too much with private business, that of almost all the probable members of the legislature being more or less connected with agriculture" (p. 384). Though Congress at the present time usually adjourns during the summer months, this is not because of the private business of the members, since at the present time only a small percentage of its members are engaged in agricultural pursuits. In the sixty-first Congress but eight percent were agriculturists; hence Mr. Ellsworth's statement has not continued to be true. James Madison said, "He preferred May to December because the latter would require the traveling to and from the seat of government in the most inconvenient season of the year" (p. 384). This prediction has little weight now, because travelling by rail is practically as convenient in winter as in summer. Gouverneur Morris agreed for
another reason, "It might frequently happen that our measures ought to be influenced by those in Europe which were generally planned during the winter, and of which intelligence would arrive in the spring" (p. 384). "Our measures are frequently influenced by those in Europe", but since the laying of the transatlantic cable in 1866 this has ceased to be a reason for postponing the meeting of our legislature three or four months.

Nathaniel Gorham, George Mason, Roger Sherman, and Oliver Ellsworth thought the constitution ought to state a fixed time for the legislature to meet. Mr. Gorham said, "If the time be not fixed by the constitution, disputes will arise in the legislature and the states will be at a loss to adjust thereto the times of their elections" (p. 383). The constitution did fix the first Monday in December for the meeting of Congress. In 1872 the time for the election of representatives was made uniform throughout the Union by a law fixing the date for elections on the Tuesday after the first Monday in November in the "even" years. George Mason said, "the extent of the country will supply business, and if it should not, the legislature, besides legislative, is to have inquisitorial powers which cannot safely be kept in a state of suspension" (p. 384). Mr. Sherman said, "The western country and the great extent and varying state of our affairs in general will supply objects" (p. 384). Congress has always found plenty of work to do. The figures for the sixty-third Congress will show something of the extent of its business. The total number of bills and resolutions introduced in this Congress to the end of the second session were 27,911, of which 6,685
were Senate bills and 19,421 house bills. Mr. Ellsworth said, "The legislature will not know till they are met whether the public interest required their meeting or not" (p. 383). This prediction is not true, since members of Congress are chosen because they represent a certain party, and hence are supposed to stand either for or against certain prospective legislation.

Rufus King disagreed. He "could not think there would be a necessity for meeting every year. The chief of their objects of legislation were commerce and revenue. When these should be once settled alterations would be rarely necessary and easily made" (p. 383). Not only has Congress met every year as the constitution provided, but from 1789-1915 there have been fifteen special sessions and five extra session of Congress lasting from ten days to eight months. The questions of commerce and revenue have never been permanently settled nor can they be. John Rutledge "supposed the general legislature would not sit more than six or eight weeks in the year" (p. 293). A regular session of Congress lasts more than six or eight weeks. The first session begins in December of the "odd" years and lasts theoretically until the following December, though in practice it usually adjourns for the summer. The second session begins in December of the "even" years and expires at noon on the fourth of the following March. Unless there is a special session, this verifies Charles Pinckney's prediction that "it (the house of representatives) would meet but

# The American Year Book, 1914, p. 175.
# Beard, Charles A., American Government and Politics, p. 248.
once a year" (p. 438); and disproves James Wilson's prediction "that the senate will moreover, in all probability, be in constant session" (p. 516). James Madison thought "if the time of meeting should be fixed by law, it would be sufficiently fixed, and there would be no difficulty then, as had been suggested, on the part of the states in adjusting their elections to it" (p. 383). Though the date was fixed by the constitution, the difficulty as to the states remained; hence the law of 1872, previously mentioned.

Three predictions have been made with reference to what should constitute a quorum in the legislature. John P. Mercer was "for less than a majority. So great a number will put it in the power of a few, by seceding at a critical moment, to introduce convulsions, and endanger the government" (p. 405). In the house of representatives it was long the practice to count as present only the members voting; hence the opposition could delay legislation by thus breaking a quorum. In 1890 Speaker Reed "directed the clerk to enter on the journal as part of the record of a yea and nay vote names of members present and not voting". At the same time the Speaker revived the right of counting those members physically present, but refusing to answer to their names on the roll call, for the purpose of compelling an adjournment in the absence of a quorum. Nothing, however, as serious as Mr. Mercer feared has occurred from the lack of a quorum. James Madison thought a majority of sixty-five members too small a number to represent all of the inhabitants in the United States. "They would not possess enough of the confidence of the people, and would

be too sparsely taken from the people to bring with them all the local information which would be frequently wanted. Double the number will not be too great, even with future additions from the new states" (p. 292). Roger Sherman thought the number required too large, because "the great distance they will have to travel will render their attendance precarious and will make it difficult to prevail on a sufficient number of fit men to undertake the service" (p. 292). These predictions have not been fulfilled, because of the great increase in the number of representatives and the change in the method of travel.

The predictions relating to the powers of Congress are numerous and deal with a variety of subjects. With reference to revenue and expenditures, Congress has been given power "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States". It is expressly forbidden to lay any tax or duty on articles exported from any state; hence most of the predictions relating to exports cannot be verified. Elbridge Gerry said, "It (the power over exports) might be made use of to compel the states to comply with the will of the general government, and to grant it any new powers which might be demanded" (p. 455). Oliver Ellsworth did not favor the taxing of exports. "First, it will discourage industry, as taxes on imports discourage luxury. Secondly, the produce of different states is such as to prevent uniformity in such taxes. There are indeed but a few articles that could be taxed at all, as tobacco, rice, and indigo; and a
tax on these alone would be impartial and unjust. Thirdly, the taxing of exports would engender incurable jealousies" (p.454). Gouverneur Morris said, "The state of the country also will change and render duties on exports, as skins, beaver, and other peculiar raw materials, politic in view of encouraging American manufactures" (p.454). Also, "taxes on exports are a necessary source of revenue. For a long time the people of America will not have money to pay direct taxes. Seize and sell their effects and you push them into revolts" (p.433). People in a new and sparsely settle country do not have but very little ready money, and an attempt to levy a direct tax always creates opposition and brings in very little revenue in proportion to the trouble and expense of collection. An example of the resistance predicted by Morris was Fries' Rebellion in 1799, which grew out of the attempt of the government to apportion a tax of $2,000,000 among the states, to be levied upon land, houses, and slaves. James Madison said, "A proper regulation of exports may, and probably will, be necessary hereafter, and for the same purposes as the regulation of imports; viz., for revenue, domestic manufactures, and procuring equitable regulations from the nations" (p.455).

With reference to taxes, duties, imposts, and excises, Elbridge Gerry said, "It might be exercised partially, raising one and depressing another part of the country" (p.433). It is not intended that this shall be the case, yet every form of raising revenue meets with objection from some part of the Union which considers itself particularly oppressed. This was the case with the first excise tax. March 3, 1791 a law was passed imposing a tax upon liquors distilled in the United States. The people in west-
ern Pennsylvania felt that this tax was aimed at them particularly, and they showed their opposition to it in the so-called whiskey insurrection. Another example was the opposition which South Carolina showed to the tariff acts of 1828 and 1830. On November, 1832, in a convention called for that purpose, she declared them null and void and of no force. Gouverneur Morris said, "The legislature will have indefinite power to tax them (the northern states) by excises and duties on imports, both of which will fall heavier on them than on their southern inhabitants, for the bohea tea used by the northern freeman will pay more tax than the whole consumption of the miserable slave which consists of nothing more than his physical subsistence and the rag that covers his nakedness" (p. 393). Elbridge Gerry said, "With regard to taxes on imposts, he conceived they would be more productive where there were no slaves than where there were", the consumption being greater" (p. 305). The system of slavery did tend to reduce the value of imports and hence would reduce the revenue from that source. In 1860, "the contribution of the southern ports to the total import duties had been but $7,000,000 or 14 percent of the ordinary annual income from customs, and it was estimated that of the imports the south consumed less than half of its proportion according to population". With reference to direct taxes, Mr. Morris said, "It is idle to suppose that the general government can stretch its hands directly into the pockets of a people scattered over so vast a country. This can only be done

through the medium of exports, imports, and excises" (p. 393).

This prediction has been practically fulfilled. Direct taxes have been imposed by Congress only five times, 1798, 1813, 1815, 1816, 1861, 1898, 1914, but each time payments were delayed or not made at all. The difficulty and expense of apportioning and collecting direct taxes is so great as to make them practically a failure as a source of revenue. Mr. Morris made one general prediction with reference to taxation, "However the legislative power may be formed, it will, if disposed, be able to ruin the country" (p. 433). This will never be the case in the United States, as public opinion controls the legislature to too great an extent.

Although the constitution gives Congress power over revenues and expenditures, it specifies that all bills for raising revenue shall originate in the house. Elbridge Gerry, Edmund Randolph, and George Mason favored this. Mr. Gerry said, "If the Senate should be allowed to originate such bills, they would reject the experiment till chance should furnish a set of representatives who will fall into their snares" (p. 188). Mr. Randolph said, "The Senate will be more likely to be corrupt than the House of Representatives, and should, therefore, have less to do with money matters" (p. 419). There is a general impression on the part of the people that the Senate is more corrupt than the house; hence one source of the desire for the election of Senators by popular vote. Mr. Mason said, "If the Senate can originate, they will, in the recess of the legislative sessions, hatch their mischievous
projects for their own purposes, and have their money bills cut and dried for the house of representatives" (p. 415). James Wilson, on the other hand, did not fully trust the house of representatives. "They will insert other things in money bills, and, by making them conditions of each other, destroy the deliberate liberty of the senate" (p. 416).

Congress was given power to regulate commerce with foreign nations, and among the several states; hence the following predictions have not been fulfilled. Gouverneur Morris said, "There is great weight in the argument that the exporting states will tax the produce of their uncommercial neighbors. The power of regulating the trade between Pennsylvania and New Jersey will never prevent the former from taxing the latter. Nor will such a tax force a direct exportation from New Jersey. The advantages possessed by a large trading city outweigh the disadvantage of a moderate duty, and will retain the trade in that channel" (p. 454).

Richard D. Spaight said, "The Southern states could at any time save themselves from oppression by building ships for their own use" (p. 490). Hugh Williamson agreed, "If a majority of the northern states should push their regulations too far, the southern states would build ships for themselves" (p. 490). George Clymer said, "The northern and middle states will be ruined, if not enabled to defend themselves against foreign regulations" (p. 489). This condition has not resulted from allowing Congress to regulate commerce. Gouverneur Morris said, "Preferences to American ships will multiply them till they can carry the southern produce cheaper than it is now carried" (p. 489). This prediction has never been fulfilled. At the present time under normal
conditions England carries nine-tenths of America's trade in her ships. Congress was given power to establish post offices and post roads. To this Benjamin Franklin wanted to add the power "to provide for cutting canals where deemed necessary". Roger Sherman objected, "The expense in such cases will fall on the United States, and the benefit accrue to the places where the canals may be cut" (p. 543). James Wilson disagreed, "Instead of being an expense to the United States, they may be made a source of revenue" (p. 543). Franklin's motion was not carried, but under its power to regulate commerce, Congress has assumed the right to build canals. Through speculation and lack of judgment, much money has been devoted to canals which has not been a source of revenue. That the United States believes they may be a source of revenue, where advantageously located, is shown by the fact that she has recently expended $312,361,840 on the construction of the Panama Canal. It is estimated that the canal has brought New York 8,100 miles nearer San Francisco by water as well as shortening the distance to foreign ports.

The question of the control of trade by Congress naturally brought in the subject of slavery. Several predictions were made with reference to this subject. Gouverneur Morris said, "He did not believe those states (the southern) would ever confederate on terms that would deprive them of that (slave) trade" (p. 301). The constitution forbade Congress to prohibit the slave trade before 1808; hence these states did confederate. Oliver Ellsworth said, "As population increases, poor laborers will be so plentiful as to render slaves useless. Slavery in time will not# The World Almanac and Encyclopedia, 1915, p. 133.
be a speck in our country" (p. 459). Roger Sherman said, "The abolition of slavery seemed to be going on in the United States, and that the good sense of the several states would probably by degrees complete it" (p. 457). These predictions were reasonable in 1787 for at that time slavery did appear to be dying out.

Though at the close of the revolutionary war every state, except possibly Massachusetts, had slaves within its borders, by the time the constitution was adopted all the New England states and Pennsylvania had abolished slavery outright or had provided for its gradual extinction. Even in the border states, Delaware, Maryland, and Virginia there was sentiment favoring ultimate emancipation. However, by 1808, the increasing profitability of the cotton culture and the irritation caused by the anti-slavery sentiment in the north had put a stop to all movements for emancipation in the South. There the demand for slaves increased until their abolition came with the Civil War. Hence, these predictions were not fulfilled. Charles Pinckney said, "If the southern states were let alone, they will probably of themselves stop importations" (p. 459). This prediction was not fulfilled, since by an act of Congress in the session of 1806-7, the importation of slaves was forbidden. James Madison said, "Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves" (p. 477). The Civil War proves this prediction. For, though the importation of slaves was prohibited in 1808, the system of slavery was so deeply seated by that time as to bring on a struggle. John Rutledge said, "If the southern states consult their interest, they will not oppose the increase of slaves, which will
increase the commodities of which they will be the carriers" (p.459). Charles Cotesworth Pinckney predicted the same, "The more slaves, the more produce to employ the carrying trade; the more consumption also; the more of this, the more revenue for the common treasury"(p.459). Contrary to these opinions, the system of slavery tended to decrease exports as well as imports (see p. 73). In the North in 1860 there were very many manufacturing towns growing rapidly and increasing in number, while in the South there were no manufacturing towns, and almost no commerce. Of the one hundred and seven cotton mills in operation, only eight were in the South; of the thirty thousand miles of railroad but ten thousand were in the south. The wealth produced in the United States in 1859 was valued at $3,736,000,000, of which $2,818,000,000 was in the North. Mr. Channing says, "To all intents and purposes, the slave states were socially, economically, and commercially where they were in 1810". "The western people are already calling out for slaves for their new lands and will fill that country with slaves, if they can be got through South Carolina and Georgia", said George Mason (p.458). This prediction was partially fulfilled. In the southwestern territory where cotton and tobacco were raised, there was an increasing demand for slaves, but in the northwestern territory where slave labor was not profitable, and the country was settled by people from anti-slavery states, the territory was opened as free territory.

# Channing, Edward, Students’ History of the United States,p.428.
Several predictions were made with reference to the powers of Congress relating to foreign affairs and the national defence. The power to make treaties was left in the hands of the president and the senate. Elbridge Gerry questioned the wisdom of this. He said, "The senate is more liable to be corrupted by an enemy than the whole legislature" (p. 439); and the "Senate will be corrupted by foreign influence" (p. 526). Gouverneur Morris objected to requiring the concurrence of two-thirds of the senate to treaties. "If two-thirds of the senate should be required for peace, the legislature will be unwilling to make war for that reason on account of the fisheries, or the Mississippi, the two great objects of the Union. Besides, if a majority of the senate be for peace and are not allowed to make it, they will be apt to effect their purpose in the more disagreeable mode of negativing the supplies for war" (p. 526). Mr. Morris also said, "As for treaties of alliance they will oblige foreign powers to send their ministers here, the very thing we should wish for" (p. 469). The United States has made no treaties of alliance; hence this prediction cannot be verified. Whether the discipline of the militia should be left to the states or to Congress called forth two predictions. Charles Cotesworth Pinckney said, "The states would never keep up a proper discipline of the militia" (p. 443). James Madison agreed, "This will no more be done if left to the states separately than the requisitions have hitherto been paid by them. The states neglect their militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety and the less prepare its militia for that purpose" (p. 465). The members of the convention decided to give Congress
power "to provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress". The states have not kept up a proper discipline of the militia, and when a war has actually happened, the militia has proven very defective and inefficient. In 1814, a force of 5,000 British soldiers ravaged the capital in spite of the nominal presence of nearly 200,000 militia in the national service. In 1861 its inefficiency was again displayed. The country had been in no peril since 1812, and the need of the militia was not apparent to the people; hence most of the volunteers who poured in at Lincoln's call entirely lacked military training. In 1903, a law was passed to improve the militia by making it a part of the regular army; regiments could be mustered to serve during the war without new enlistment; and they were to be instructed by regular officers during peace. Standard arms were to be furnished to all of the organized militia by the war department; and officers were appointed to inspect the militia of different states. In 1908 this law was amended, providing an annual grant of $4,000,000 for the maintenance and equipment of the militia.

In addition to protecting the states against invasion, the constitution provides for their protection against domestic violence. John Rutledge thought it unnecessary to insert such guarantee. "No doubt could be entertained but that Congress had the authority if they had the means to cooperate with any state in subduing a rebellion. It was and would be involved in the value
of the thing" (p. 333). Nathaniel Gorham "thought it strange that a rebellion should be known to exist in the empire, and the general government should be restrained from interposing to subdue it. At this rate, an enterprising citizen might erect the standard of monarchy in a particular state; might gather together partisans from all quarters; might extend his views from state to state, and threaten to establish tyranny over the whole, and the general government be compelled to remain an inactive witness to its own destruction. With regard to different parties in a state, as long as they confine their disputes to words, they will be harmless to the general government and to each other. If they appeal to the sword, it will then be necessary for the general government, however difficult it may be to decide on the merits of their contest, to interpose and put an end to it" (p. 333). John Langdon said, "The apprehension of the national force will have a salutary effect in preventing insurrections" (p. 438). On several occasions the federal government has given its aid to put down insurrections. In 1794, the so-called Whiskey Rebellion was settled by militia, called out by the president. On this occasion, the "apprehension of the national force" on the scene of the insurrection was sufficient to dispel it. As a rule no resistance is offered to the federal forces, although they sometimes have to do police duty for a time.

Not only has the president acted against insurrections within a state, but also against the states themselves as offending parties. Regarding this, James Madison said, "The use of force against a state would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party
attacked as a dissolution of all previous compacts by which it might be bound" (p. 140). Also "any government of the United States formed on the supposed practicability of using force against the unconstitutional proceedings of the states, would prove as visionary and fallacious as the government of Congress. The negative would render the use of force unnecessary" (p. 171). In 1861-65 the United States demonstrated its right to use force against a state. The attempt to compel the states to remain in the union was regarded by those seceding as a declaration of war. It proved practical, however, as it forced their return to the union and settled the relation of the states to the federal government.

Alexander Hamilton said that in the event of such a civil war, "foreign powers will not be idle spectators. They will interpose, the confusion will increase, and a dissolution of the union will ensue" (p. 200). Also, "alliances will immediately be formed with European nations who will foment disturbances among ourselves and make us parties of all their own quarrels" (p. 258). Foreign powers were not idle spectators during the war. England and France recognized the belligerency of the southern states by declaring themselves neutral, and were probably saved from allying with the south only by Lincoln's diplomacy. The last prediction, therefore, was not fulfilled.

Although the constitution denied the states the right of issuing bills of credit, nothing was stated as to the right of the federal government. This was not due to the fact that the matter was not discussed, for we have many predictions growing out of the discussion on this subject. No doubt many of the members thought as did George Mason that "Congress would not have the power unless
it were expressed" (p. 434). The first Congress did not interpret the omission in this way, and since 1789 paper money has been the principal medium of exchange, except on the Pacific Coast. Gouverneur Morris said, "The moneyed interest will oppose the plan of government, if paper emissions be not prohibited" (p. 434). The omission seemed to satisfy this element. Mr. Morris also said, "Emissions of paper, largesses to the people, a remission of debts, and similar measures will at times be popular, and will be pushed for that reason" (p. 346). This prediction has been fulfilled as paper money has been popular or at least in popular use since 1793. It is estimated that by 1800 out of a total circulation of $27,000,000 paper money in the form of bank notes contributed $11,000,000, or forty percent. Nathaniel Gorham said, "The power, as far as it will be necessary or safe, is involved in that of borrowing" (p. 435). James Wilson agreed, "It will have a most salutary influence on the credit of the United States to remove the possibility of paper money. This expedient can never succeed, while its mischiefs are remembered; and, as long as it can be resorted to, it will be a bar to other resources" (p. 435). Oliver Ellsworth said, "Paper money can in no case be necessary. Give the government credit, and other resources will offer. The power may do harm, never good" (p. 435). These predictions have been fulfilled, since the United States has lost heavily in its experiments with paper money. The direct loss of the government from poor or worthless bank notes received during the years from 1814-17 was over $5,000,000. As

a result of depreciated currency, the government received only $34,000,000 for loans of over $80,000,000. It is estimated that
the paper issues during the civil war increased the cost of the war
from $528,000,000 to $600,000,000, to say nothing of the burden they
placed upon the people because of depreciating prices and hence
wages. Since the Civil War at times the support of the credit of
the treasury notes has strained the government. It requires keep­
ing a dead stock of gold as reserve; and for its preservation from
1894 to 1896 it was necessary to engage in bond operations on dis­
advantageous terms. George Read thought the words giving power
to Congress to emit bills of credit, "if not struck out, would be
as alarming as the mark of the beast in Revelation"(p.435). Mr.
Morris thought such bills unnecessary. "If the United States had
credit, such bills would be unnecessary; if they had not, unjust
and useless"(p.434). John Francis Mercer favored leaving the sub­
ject indefinite. "It will stamp suspicion on the government to
deny it a discretion on this point"(p.435). His opinion prevailed.

Two prediction were made with reference to the amendment of
the constitution. Roger Sherman "expressed his fears that three­
fourths of the states might be brought to do things fatal to par­
ticular states, as abolishing them altogether, or depriving them of
their equality in the Senate"(p.551). George Mason said, "As the
proposing of amendments is in both modes to depend in the first
immediately, and in the second ultimately on Congress, no amend­
ments of the proper kind would ever be obtained by the people, if

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the government should become oppressive, as he verily believed would be the case" (p. 551). The extraordinary majority, which Mr. Sherman feared, has had the opposite effect to that he feared.

The tendency has been in the direction of Mr. Mason’s prediction. Professor J. Allen Smith (Washington University) has estimated that some twenty-two hundred amendments have been proposed and met defeat. Only two since 1870, the sixteenth and seventeenth, have secured the requisite two-thirds majority in the Senate and House.

James Madison suggested that the United States be given power “to grant charters of incorporation where the interest of the United States might require, and the legislative provisions of the individual states may be incompetent.” Rufus King objected, “The states will be prejudiced and divided into parties by it. In Philadelphia and New York, it will be referred to the establishment of a bank, which has been the subject of contention in those cities. In other places, it will be referred to mercantile monopolies” (p. 544). James Wilson "as to banks, did not think with Mr. King that the power in that point of view would excite the parties and prejudices apprehended" (p. 544). Though Mr. Madison’s motion was not carried, Congress assumed the right to establish a bank in its first session. This did "excite parties and prejudices" and because one of the leading issues of the anti-federalist party, which stood for the strict construction of the constitution. Since this party was in power in 1811, when its charter expired, they did not

recharter it. In 1816 a second bank was established, which also became a partisan issue. It existed until Jackson became president in 1833, in a campaign turning on its recharter. He ordered the government deposits to be withdrawn, and the second bank closed its doors. Opposition against a United States bank has continued to be so strong that no third one has been established.

James Madison and Charles Pinckney wished Congress to be given power to establish a university. Gouverneur Morris thought it unnecessary, "The exclusive power of the government will reach that object" (p. 544). No university has been established by the government, but such work has been left in the hands of the states.

Gouverneur Morris made a general prediction with reference to the power of the legislature. "The legislature will continually seek to aggrandize and perpetuate themselves, and will seize those critical moments produced by war, invasion, or convulsion for that purpose. It is necessary then, that the executive magistrate should be the guardian of the people, even of the lower classes, against legislative tyranny, against the great and the wealthy, who in the course of things, will necessarily compose the legislative body" (p. 334). Although Congress is continually extending its powers especially over social and economic matters, yet it does not perpetuate it or make it a tyrannical body. Its power always has at least two checks, public opinion and the courts. As has already been shown, Congress is not composed entirely of the great and wealthy.
Chap. VI  Predictions Relating to the Judiciary Department.

One of the chief difficulties under the Articles of Confederation had been that the congress had no means of enforcing its treaties or laws except through the courts of the states, who were often unwilling to aid it. Hence after dear experience the members of the convention were unanimous in their opinion that a national judiciary ought to be established to enforce and apply the laws justly and impartially. Some discussion was entered into as to the best method of appointing the judges to secure this end; hence several predictions.

Nathaniel Gorham favored an appointment by the executive; "as the executive will be responsible in point of character, at least, for a judicious and faithful discharge of his trust, he will be careful to look through the states for proper characters. The senators will be as likely to form their attachments at the seat of government, where they reside, as the executive. If they cannot get the man of the particular state to which they may respectively belong, they will be indifferent to the rest" (p. 328-9). Also "if the appointment should be left to either branch, it will be a mere piece of jobbing" (p. 330). Gunning Bedford, Charles Pinckney, and Oliver Ellsworth disagreed. Mr. Bedford said, "It (appointment by the executive) would put it in his power to gain over the larger states by gratifying them with preference for their citizens" (p. 329). Mr. Pinckney said, "The executive will possess neither
the requisite knowledge of characters, nor the confidence of the people for so high a trust." (p. 350). Mr. Ellsworth said, "The executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary, it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses and intrigues than the Senate. The right to supercede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment." (p. 350). Roger Sherman favored an appointment by the Senate. "It would be composed of men nearly equal to the executive and would, of course, have, on the whole, more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them than with the executive magistrate. For these reasons, he thought there would be a better security for a proper choice in the Senate than in the executive" (p. 329). Edmund Randolph agreed, "The hope of receiving appointments would be more diffusive, if they depended on the senate, the more members of which would be diffusively known than if they depended on a single man who could not be personally known to a very great extent; and consequently that opposition to the system would be greatly weakened." (p. 329). Gouverneur Morris did not favor an appointment by the Senate alone. "First, the states, in their corporate capacity, will have frequently an interest staked on the determination of the judges. As in the senate, the states are to vote, the judges ought not to be appointed by the Senate. Next to the impropriety of being a judge in one's own cause, is the appointment of the judge. Secondly, it has been said, the executive
would be uninformed of characters. The reverse was the truth; the Senate will be so. They must take the character of the candidates from the flattering pictures drawn by their friends. The executive, in the necessary intercourse with every part of the United States required by the nature of his administration, will or may have the best possible information. Thirdly, it has been said that a jealousy would be entertained of the executive. If the executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of jealousy in the present case" (p.350). The power of appointing the judges was not left to either the president or senate alone, but they are nominated by the president with the consent and advice of the senate. This has had the effect predicted by James Madison. "It would unite the advantage of responsibility in the executive with the security afforded in the second branch against any incautious or corrupt nomination by the executive" (p.329). This method of appointment has secured a judiciary of high character, free from corruption and, to a great extent, from party control. However, the president does not nominate the judges without political considerations. Only one instance has occurred in which the president has nominated to the supreme court a member of a party in opposition to the administration. Henry R. Jackson, a Democrat, was thus appointed by President Harrison, a Republican, in 1893. This same president also appointed several judges of the newly created Circuit Court of Appeals from those who were not of his party.

Since appointments only occur upon the death or impeachment of a member, they are few, and one president alone cannot make the court a party organ.

Some of the members of the convention favored the establishment of inferior courts in addition to the Supreme Court. James Madison said, "Unless inferior tribunals were dispersed throughout the republic with final jurisdiction in many cases, appeals would be multiplied to a most oppressive degree; that, besides, an appeal would not in many cases be a remedy. A government without a proper executive and judiciary would be the mere trunk of a body, without arms or legs to act or move" (p. 159). Luther Martin and Pierce Butler disapproved of such courts. Mr. Martin said, "They will create jealousies and oppositions in the state tribunals, with the jurisdiction of which they will interfere" (p. 331). Mr. Butler said, "The people will not bear such innovations. The state will revolt at such encroachments" (p. 159). The constitution provided for the establishment of one supreme court, and such inferior courts as Congress may from time to time ordain and establish. Accordingly, by the judiciary act of 1789, Congress created a supreme court to be held by a chief justice and five associate justices, three circuit courts, and thirteen district courts. Although, as the members of the convention intended, "the enumerated cases of federal cognizance are those which touch the safety, peace, and sovereignty of the nation, or presume that state attachments, state prejudices, state jealousies, and state interests might sometimes ob-
struct or control the regular administration of justice". Yet several occasions have arisen where the state courts have felt the "encroachment" of the national courts. Two examples may be cited. In 1798 the Alien and Sedition laws were passed, and a crime which had heretofore been cognizable in the state courts became the subject of prosecution in the courts of the United States, if it affected an officer of the United States. Accordingly, a member of Congress, Matthew Lyon of Vermont, was sentenced in the fall of that year to a fine of $1000 and four months in jail for writing seditiously of the president and senate. The case of Jonathan Robbins in South Carolina in 1799 showed that the circuit court at the request of the president could surrender an American citizen to a foreign government to be carried off and tried for murder. This and the case of Lyons were both regarded as encroachments upon the state courts, and called forth heated discussions in Congress. Both contributed to the defeat of Adams and election of Jefferson in 1801. Such conflicts of authority are rare, however, and each of the judiciaries, the state and national, considers the other as sovereign in its own sphere.

As to the salaries of the judges, Gouverneur Morris "thought the legislature ought to be at liberty to increase salaries as circumstances might require, and that this would not create any improper dependence in the judges"(p.330). Dr. Franklin agreed, "Money may not only become plenier, but the business of the department may increase, as the country becomes more populous"(p.330). James Madison said, "The dependence will be less if the increase alone should be permitted, but it will be improper even so far to

A dependence. The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may easily be so contrived as not to affect persons in office (I. 330-1). The constitution does not prohibit the increase of the salaries of judges, but it does provide that they shall not be diminished during their term of service. In spite of this, the salaries are not large, the chief justice of the supreme court receives $13,000 per year, and his associate justices $12,500. Circuit judges now receive that amount. The increase of business has been provided for by an increase in the number of judges. In 1789, the supreme court was made to consist of six members, while now it has nine. In 1789, there were three circuit courts and thirteen district courts; now although the circuit courts have been abolished (1912) there are ninety-two district courts. In addition to these, a court of claims has been established to adjudicate claims against the United States, and a court of customs appeals to hear appeals in customs cases.

Several predictions were made with reference to the power of the judiciary. Gouverneur Morris said, "A law that ought to be negatived will be set aside in the judiciary department, and if that security should fail, may be repealed by a national law" (p. 321). The constitution (Act III, Sec. II) gave the judges power to declare a state statute void, if contrary to the constitution. By this power the supreme court of the United States has set aside over two hundred statutes passed by the states. All but twenty-six of these decisions have been rendered since 1830. The fourteenth amendment has added largely to the list since its adoption in 1868.

James Madison favored giving the national judiciary a share in the revision of the laws. "It would be useful to the judiciary department by giving it an additional opportunity of defending itself against legislative encroachments. It would be useful to the executive by inspiring additional confidence and firmness in exerting the revisionary power. It would be useful to the legislature by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity, and technical propriety in the laws, qualities peculiarly necessary and yet shamefully wanting in our republican codes. It would, moreover, be useful to the community at large as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities" (p. 345). Also "the executive magistrate would be envied and assailed by disappointed creditors, his firmness would need support" (p. 164). This latter prediction has been fulfilled as has been shown in a former chapter, but the federal civil service reform acts are tending to eliminate the evil.

George Mason favored the idea; "it would give a confidence to the executive which he would not otherwise have, and without which the revisionary power would be of little avail" (p. 345). James Wilson agreed, "Laws may be unjust, may be unwise, may be dangerous, may be destructive, and yet may not be so unconstitutional as to justify the judges in refusing to give them effect. Let them have a share in the revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of countering by weight of their opinions, the improper views of the legislature" (p. 344). Oliver Ellsworth approved, "The aid of the judges will give more wisdom and firmness to the executive. They will
possess a systematic and accurate knowledge of the laws which the executive cannot be expected to possess. The law of nations, also will frequently come into question. Of this the judges alone will have competent information"(p.344). Elbridge Gerry, Luther Martin, Nathaniel Gorham, and Charles Pinckney opposed giving the judges this revisionary power. Mr. Gerry said, "They will have a sufficient check against encroachments on their own department by their exposition of the laws, which involved a power of deciding on their constitutionality"(p.151). In the famous case of Marbury vs. Madison, Chief Justice Marshall, demonstrated with logic that has never been contradicted that the court under the constitution possesses power to determine the constitutionality of a law. However, the supreme court has pronounced as void, from its foundation to 1903, only twenty-one acts of Congress. Mr. Martin predicted the same; "as to the constitutionality of the laws, that point will come before the judges in their official character. In this character they have a negative on the laws. Join them with the executive in the revision and they will have a double negative: "The confidence of the people will soon be lost if they are employed in the task of remonstrating against popular measures"(p.347). Mr. Gorham's objections were; first, "that the judges ought to carry into the exposition of the laws no prepossessions with regard to them; the second, that as the judges will outnumber the executive, the revisionary check would be thrown entirely out of the executive hands, and, instead of enabling him to

# Baldwin, Simeon, E., The American Judiciary, p. 106.
defend himself, would enable the judges to sacrifice him" (p. 348).
Charles Pinckney said, "It will involve them (the judges) in parties and give a previous tincture to their opinions" (p. 429).
Since the judiciary was given no share in the revisionary power, the predictions relating to that subject cannot be verified.
In addition to the predictions relating to the departments of government, there were several miscellaneous predictions made in the convention. George Mason said with reference to the migration of the people westward, "If it were possible by just means to prevent emigrations to the western country, it might be good policy. But go the people will, as they find it in their interest; and the best policy is to treat them with that equality which will make them friends, not enemies" (p. 492). The people did move westward in such great numbers that the center of population moved one hundred and twenty-five miles to the west from 1800 to 1830 and one hundred and ninety-one miles from 1830 to 1860.

Alexander Hamilton said, "Persons in Europe of moderate fortunes will be fond of coming here where they will be on a level with the first citizens" (p. 411). This prediction has been fulfilled, no doubt, far beyond Hamilton's expectation. It has been estimated that from 1776 to 1830 there were 250,000 immigrants. By 1860 the foreign born population formed thirteen percent of the total. At the present time it represents twenty-two percent.

Charles Pinckney said, "In a new country possessing immense tracts of uncultivated lands, where every temptation is offered to emigration, and where industry must be rewarded with competency, there will few poor, and few dependent. Every member of society almost will enjoy an equal power of arriving at the supreme offices and consequently of directing the strength and sentiments of the whole community. None will be excluded by birth and few by
fortune from voting for proper persons to fill the offices of government. The whole community will enjoy in the fullest sense that kind of political liberty which consists in the power that the members of the state reserve to themselves of arriving at the public offices, or, at least, of having votes in the nomination of those who fill them" (234). Although the suffrage is very broad, there are more restrictions than Mr. Pinckney predicted. Property qualifications have been abolished in practically all the states, but at least nineteen of the states still require the payment of a poll tax. Three quarters of the states require their voters to be full-fledged citizens of the United States, while ten grant the right of suffrage after a residence of from sixty days to a year in the state, and the declaration of their intention to become citizens. Reading and writing tests are applied in about a dozen states. As a result of these varying tests, the proportion of votes to the population differs widely in different states, as may be shown by the figures for 1910 in the following representative states. The number of votes actually cast for Congressmen in Utah bore the ratio of 1 to 4 to the population; in Oregon, 1 to 6; in Massachusetts, 1 to 8; South Carolina, 1 to 50; in Mississippi, 1 to 75. Every member of society, except him who is foreign born, does have an opportunity of arriving at the supreme office of the government. The various classes that the presidents


have represented verifies this point. There was Jackson, who was only a planter in the Carolinas, but who won distinction and finally the presidency because of his military successes. Lincoln was a poor white from Kentucky, at one time a rail splitter. In contrast to these are Taft and Wilson; the former, a successful lawyer from Ohio, and the latter, a professor and former president of Princeton University.

Mr. Pinckney said also, "If that commercial policy is pursued which I conceive to be the true one, the merchants of this country will not, or ought not, for a considerable time, to have much weight in the political scale" (p. 237). The power of the merchant class in politics has been gradually increasing until at present they have great influence. This is particularly evident in the senate. Though two-thirds of the senate is composed of lawyers, yet they are lawyers most of whose practice has been connected with great business interests. "The other third of the senate is drawn in an increasing degree from men of wealth or those who have achieved success in the great financial, commercial, or transportation enterprises". The urgent demand for the election of senators by the people has come as a protest against this class spirit in the senate.

Some of the members of the convention favored requiring the members of the state governments to take oaths to support the national constitution and laws. Edmund Randolph said, "Unless the executive and judiciary of the states are brought under some tie

to the national system, they will lean too much on the state systems whenever a contest arises between the two" (p.183). The constitution (Art. VI, Para. III) requires the state officers to take oath to support the federal constitution.

Several predictions were made with reference to the relation of the state governments to the federal government. Alexander Hamilton said, "The general power, whatever be its form, if it preserves itself, must swallow up the state powers. Otherwise it will be swallowed up by them. It is against all the principles of a good government to vest the requisite powers in such a body as Congress. Two sovereignties cannot co-exist within the same limits" (p.202). Also, "if it were limited at all the rivalship of the states would gradually subvert it. Even as corporations, the extent of some, as Virginia, Massachusetts, etc. would be formidable" (p.212). And "a dissolution of the latter (general government) would be fatal; of the former (state), would still leave the purposes of government attainable to a certain degree" (p.200). These predictions have not been fulfilled, although the powers of the national government have been limited and the states have been allowed to exist. At times it has seemed as if the "rivalship of the states" might subvert the national government, but the civil war has settled the matter. Elbridge Gerry said, "If nine out of thirteen can dissolve, the compact (the Articles of Confederation) six out of nine will be just as able to dissolve the new one hereafter" (p.533). Although there had been several threats, no real attempt to "dissolve the compact" was made until 1861, when the eleven southern states asserted their right to withdraw from the
union. The Civil War decided once for all that the states could not secede and that the union was indestructible. This disproves Rufus King's prediction that "whenever the southern states shall be more numerous than the northern, they can and will hold a language that will awe them into justice. If they threaten to separate new in case injury shall be done them, will their threats be any less urgent or effectual when force shall back their demands? Even in the intervening period there will be no point of time at which they will not be able to say, "Do us justice, or we will separate" (p.304-5). Mr. King also said, "There never will be a time when it will act as a federal government on the states and not on the individuals" (p.312). Any action by the federal government against a state has not been taken against the state as a sovereignty, but against the individuals composing the state. If the officers of the state commit unconstitutional acts, then they are no longer regarded as representatives of the state, but are punished as individuals.

Several predictions were made with reference to the constitution as a document. Gouverneur Morris said, "When it (the constitution) first appears the people will be favorable to it. By degrees the state officers and those interested in the state government will intrigue and turn the popular current against it" (p.4501). Both people and state officers were divided in their opinions of the constitution. It was unanimously adopted in three states, Delaware, New Jersey, and Georgia, and in the other both people and officers divided into two great parties according to whether they opposed or favored the constitution. Each side used
every means at its disposal to win converts from the opposing side. New York, however, stands out conspicuously as a state in which the governor, George Clinton, was vehemently opposed to the constitution, but to offset his influence was the influence of such strong men as Robert Livingston, John Jay, and Alexander Hamilton.

John Francis Mercer said, "It is a great mistake to suppose that the paper we are to propose will govern the United States. It is the men whom it will bring into the government and interest in maintaining them that are to govern them" (p. 424). This prediction is true, for the written constitution is only the "skeleton" of constitutional law, while the "flesh and blood" are to be found in the decisions of the courts and acts of the legislature which are published and enacted in enforcing the written constitution. These decisions and acts are, of course, the products of the men who are governing. Jefferson spoke truly when he said that John Marshall/the Supreme Court were making a constitution for the government. Benjamin Franklin realized this too, when he said, "This (the government) is likely to be well administered for a course of years and can only end in despotism, as other forms have done before it, when the people shall have become so corrupted as to need despotic government" (p. 554).

That some of the members of the convention realized the importance of the document which they were formulating may be shown by the following predictions; Gouverneur Morris said, "The whole human race will be affected by the proceedings of this convention" (p. 276). Dr. Franklin said, "This constitution will be much read if and attended to in Europe, and it should betray a great partiality
to the rich, will not only hurt in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this country" (p. 403). These predictions have been fulfilled. Many examples might be given, but a few will illustrate the point. Japan has incorporated parts of the American constitution into her constitution. Australia carefully studied the weak and strong points in our constitution and profited by them when seeking to form a federation of her states. She noticed the growing opposition in American to the choice of senators by the state legislatures. James A. Bryce says, "It was partly because the Australian convention had become aware of this tendency of American opinion that they rejected the existing American plan". William E. Gladstone said of our constitution, "Just as the British constitution is the most subtle organism which has proceeded from the progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."


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