Consider,

1. Is it proper and necessary to have one at all?
2. The manner in which it should be elected and
3. The time of their service.

Is it proper and necessary to have a senate?

This will be made manifest by an attentive consideration of the dangers that will attend the vesting the legislative power in a single body.

and the additional security that will be derived from a second branch in the legislature.

Liberty consists not merely in an actual exemption from the constraint of usurious and vicious laws, but being free from the danger of having such passed in future.

That people, government, and constitution is the forest which makes the best provision for the enacting of expedient and salutary laws:

A good government implies two things:

1. Fidelity to the object of the government, which is the happiness of the people.
2. A knowledge of the means by which that object can be best obtained.

And as they will have the same interests with the body of the people, from their living with them, being chosen by them, being subject both in person and property to the same laws, being liable to be punished for malpractices in office, and finally being dependent on the goodwill and favorable opinion of the people, for a continuance in office.

Therefore as them must when there is such a body be less danger of having unjust laws passed;

A greater security, and a greater confidence in the people that they will not be pleased.

The same exaltations to promote the happiness of the people at large.

and a greater degree of the knowledge requisite to point out the means by which that happy process can be attained:

Therefore a senate must contribute to the preservation of liberty, and the happiness of the people:

The factions and unevenness of a single legislative body are equally dangerous to the people.
For as the first proceeds from the contests of different parties, who have private views not the public good for their object;

So the other is too often the consequence of a general consent, of the members of that body, to oppose all power in their hands for their present purposes;

The effects of both will be counteracted by a senate;

Establishing a senate is only dividing the same powers between two houses instead of giving all to one:

In republican governments the legislative authority necessarily predominates; it is the nature of power always to press upon the boundaries which confine it; and the legislature has so much of it constitutionally, that no sufficient barrier can be opposed to its inroads, and of consequence it will accumulate into its own hands all authority;

but as power is the only proper check to power, establishing a second branch of the legislature, will be a sufficient check on the improper use of that power;

for power is the rival of power, and always views with jealous eyes the power by which it is rivaled:

Therefore each branch of the legislature will at all times be ready to check the usurpations of the other:

And the people by throwing themselves into either scale will make it proportionate:

The abuse of power in the legislature is best guarded against, because least dreaded and watched by the people.

A dangerous coalition between the two houses not to be doomed to punishment for the public good;

because of the servitude which will necessarily exist between them:

because of the difference of their views — local — general —

and because of the different manners of their being elected — by counties —

by the state; and

This servitude in each will produce efforts to exceed the other in proposals for the public good;

the sense of a majority of the people in any country, when it is decided and forced ought to prevail.
As the senate will be chosen from the state at large, they will be more likely to pay proper regard to the sense of the body of the people than the representatives, many of whom may be influenced by their local interests or the opinions of their constituents, to disregard and oppose the general sense.  
And if the senate do not follow the will of the body of the people—this may ensue as a change of measures;  
by changing that whole body at one election:  
but as the sense of the body of the people ought to prevail, the caprice or injustice of a part, or the momentary delirium even of the body of the people themselves ought to be withstood by a good government:  
This most likely to be done by the senate, nothing but the general will can influence the conduct;  
if that general will is the operation of delirium, they will oppose it for a time until reason assumes its place:  
from the tenure of their office;  
and they will oppose the improper views of a party;  
stop the momentary folly of all;  
and acquiesce in the settled determinate will of the majority:  
There have been times in all countries, when such a body would have saved their country from disgrace or ruin:  

If there had been such a one at Athens at the time,  
The Athenians would not have passed a law which renders it a capital crime for any one to oppose applying the money designed for the theatre to the military service.  

Public bodies as well as individuals, are liable to the influence of sudden and violent passions, under the operation of which, the voice of reason is silenced:  
This proves the expediency of dividing the powers of legislation, between two bodies of men, whose debates shall be separate, and not dependent on each other;  
that if at any time one part should appear to be under the influence of passion, there may be a power in the other branch, sufficient to check every pernicious measure:  

The partial views of the H. of K. and the partial laws which they give birth to is one of the greatest evils in a representative government:
This partiality proceed from their being chosen by particular counties; which improperly makes the interest of the county their object instead of the general welfare.

This spirit will be effectually checked by a senate chosen for the whole state; who will from this cause gradually lose their partiality; generalize their views, and consider them selves as acting for the whole state.

Hence there will be union and firmness in the senate.

Here the general good will be the object of legislation, and here will be a sufficient check on the partial and uninterested acts of the other branches.

The senate must always take such steps as will unquestionably convince the people, that they are pursuing their real interests; otherwise the H. of R. will from their number, their connections, and from the predominance of the people for them, in consequence of their being chosen immediately by them, have the people on their side in case of a dispute.

This will ensure that it will be their interest, to pursue those measures for the public good, which their superior wisdom will enable them to discern.

In republics where power is given for a limited time, a bare remuneration for betraying its trust, more than equal to its proportion of interest in the common stock, and an on man balance to the obligations of duty would be a valuable acquisition to a government on that account.

The senate can never be dangerous to the happiness and welfare of the people at large; for, they will either be sufficiently dependant on the people, or they will not; on the first supposition, it will be sufficiently restrained by that dependence from forming schemes obnoxious to the people; on the other supposition, it will not possess the confidence of the people, and its schemes to their prejudice will be easily defeated by the H. of R. supported by the people.

Great danger if popular assemblies being misled by a popular or artful leader.
Such a character cannot be a member of both houses; and therefore one will judge coolly and from reason:

if each house has its leader, the same spirit of rivalship which exists between the two houses will prevent a coalition between their leaders, and as each house so each of its leaders, will endeavour to secure the public confidence by the goodness of his measures.

Instability and confusion have been the mortal diseases under which popular governments have everywhere perished.

If F. ought always to be chosen annually;

each new election brings about a change of great part of the members;

a change of men, a change of measures;

then, where there is only a single branch, every thing is fluctuating;

so that being chosen for a longer period, will not consent to unnecessary changes;

or to repeal a law before a fair experiment has been made of it.

This will give stability to the government.

Instability in public matters are as dangerous as in private life; and therefore it is always followed by ruin;

where laws are always changing a man does not know whom he is obeying or breaking them, for what is law today is not so to morrow:

Making property insecure; and prevents the undertaking any thing, which requires time to bring it to perfection:

And it puts the body of the people into the power of the speculator, who can trace a new measure up to its consequence.

And it will lose the confidence of the people;

for no government any more than an individual, will long be respected without being truly respectable, nor be truly respectable without passing some degree of order and stability.

Where there is but a single branch of the legislature, and that chosen for a year, there is not a sufficient degree of responsibility:
because of the great number of men, in a short time,
not any body enough to attend to 
and answer for the success of a measure.

Senate by being elected for a longer time, will be more responsible for the measures taken:
The senate may by their share in the legislature, always prevent a measure which
would be fatal, or prejudicial, to the people.

but they could only postpone a measure, which was really for the public good.
The difference to the public in the consequences of their good or bad conduct must be
dermore in their favour.

in one case they may be the salvation of their country;
in the other they only bring on it a temporary inconvenience:
the taking one fatal step may be even lasting ruin;
the not acting for a short time can seldom be very prejudicial:

— Break the Union —

Before the senate can be dangerous, it must corrupt itself;
it must corrupt the H. of C.; it must corrupt the electors; and it must corrup
the body of the people:

It is evident that the senate must be first corrupted itself; before it can betray the in-
terests of the people.
without corrupting the H. of C. the opposition of that co-equal branch of the legisla-
ture, would immediately defeat the attempt.
without corrupting the electors, they would make a new choice; and without corrupting
the body of the people, by their making a new choice of electors, a new set of senators
would be chosen, and all their schemes defeated.

If the senate should attempt any thing dangerous, before they had completed the works
of corruption, the H. of C. with the people on their side would always be able to
disappoint them.

Against the force of the immediate representatives of the people, nothing will be able to
maintain even the constitutional authority of the senate; but such a display of im-
luminated policy and attachment to the public good, as will decide with that branch
of the legislature—the affections and support of the whole body of the people them-
selves.

Besides the means of corruption must always be possessed by the corrupted before Rec-
affected his purpose;

but the senate cannot acquire these means but with the consent of the H. of R. Therefore they would be restrained from the attempt by the want of the means:

The difference between the two houses could never be lasting or fatal.

Some difference of opinions and passing will take place; and might for a short time stop solitary measures;

but they must proceed on either from the operations of reason, working a conviction in the minds of one party,
or from the interference of the body of the people;
or from a spirit of confinement dictated by the public good;

and their dissensions must end on a determination being made;

because their resolution when taken would be a law,

and resistances to it punishable;

The legislative body being composed of two parts, one checks the other by the mutual knowledge of rejecting;

But as there is a necessity for movement in the course of human affairs, they are forced to move, but still to move in concert;

Our reason them as far as she can be relied on, and the opinions of the wisest men both declare in favour of a senate;

Let us next consult experience on the subject, she is the best instructor may.

Better than a thousand theories.

The history of all the best governments that we are acquainted with afford strong proofs of the utility of a senate:

Rome, — Athens, — Carthage, — Sparta —

had their senates and most of their property has been attributed to them:

England, has here;

And her writers say her government could not exist without it; may the long parliament which usurped all power, did not dare clothe themselves perpetual until,

they had voted the house of lords useless;

but we shall gain abundant information on the subject in America:

and we find on enquiry that the people of America are unanimous on their opinion.
in favour of it, it will be one of the strongest arguments that can be used in its favour:

for an intelligent, and well informed people, seldom adopt and steadily approve a measure contrary to their true interests.

Every state, in the union had a senate in its government after the revolution, except Georgia, and Pennsylvania.

Georgia thought no check necessary on the W. of P.

Pennsylvania thought a check necessary; but instead of a senator, directed that all laws of a public nature should be published for consideration of the people.

But this upon experiment, like all other paper checks was found ineffectual; and Pennsylvania and Georgia both have formed new governments, and each has now its senate.

This is a decisive proof that America all thinks it right.

The general government affords a still greater one,

that was warmly opposed in almost every part of America; and yet I never saw in print,
or heard in private or public debate, any objection made to a senate's being introduced into it.

This must be conclusive as to the sense of Americans:

Notwithstanding the concurrent testimony of reason, and experience in favor of a senate, some politicians in this country objected to it.

If I understand them their objections are two,

1st. That it makes a distinction of persons in the state;

2d. It too much increases the expense of government.

It can cause no distinction of persons unless there is a difference in the qualifications of the electors;

it only adds another set of magistrates or public servants;

no greater distinction between a senator and a citizen, than between a representative and a citizen;

may as the power of the senator is less than that of the representative would be if there was no senate, there is less.

But in fact the one is both servants to the people.
equal as citizens — servants to the body —

superior to each citizen only as they are magistrates;

If the objection is to their superiority as magistrates, it is still worse founded,

because it goes to the destruction of all government.

for all is lost in a republic, unless the magistrate is as much considered as superior to the
citizen:

in this consists the difference between a well regulated republic, and one that is not.

Republic government is never more in danger, than when the people want to be,

and every citizen thinks himself on a level, with those they choose to govern them.

2d. Excellence.

If necessary, it ought to be borne, that it is increased:

the amount of the charge of government should have been considered before we deter-
mine on having one;

but having determined on it, we should not spare what is necessary, because it will

render useless what we do pay:

a prudent man will calculate before he determines to build, but having set about

it,

he will not refuse to pay for braces, underpinnings, or chimney:

but expense will be saved by it;

but expense will be saved by it;

senate only 1/3 can only add nominally that proportion to the expense;

great part of time taken up in preparing business this;

two houses will do twice as much in the same time;

some business in 1/4 of the time, senate;

but the great saving will be in doing the business well;

amending, repealing, and disposing about bad laws, takes more time than good ones;

as it is better to make a piece of work answer than alter it after bad workmen;

Thus I think we may conclude:

that the establishment of a senate divides the power, checks, restrains, and amends
the proceeding of the legislature;

at the same time, that is creates no division between them, that can tempt any
other branch to encroach on the other, or the people.

that in cases of danger to the public welfare, such restraint will be our greatest safety.

in times of tranquility, or measures obviously calculated for the general good, both
Branches will be unanimous:

2d. The manner in which it should be elected.

Three ways of doing it;

1. By the people themselves in Districts;
2. By the people throughout the state; or
3. Chosen by the people in each county.

Before we determine on the mode of election, we should remember what ought to be the qualifications of the senators:

and what are the advantages that ought to be derived from the union?

They should possess virtue, wisdom, and experience,

a thorough knowledge of the interests of the country at large, and a determined resolution to sacrifice all local considerations to the public good;

As a body they should,

inspire confidence in the government;

prevent a suspicion that partial or unjust laws will be enacted;

give stability and consistency to the public measures;

and prevent the passage of any law that has not the good of the whole for its object.

If they are chosen by the people at large throughout the state;

there would be little probability that the best men would be elected.

The people who they may form a good judgment who is the best man, in the country cannot all who are the 15 or 30 best men;

therefore they must vote for their neighbours or strangers;

and if chosen in this way,

that part of the country which was most populous would carry all the elections as most votes would unite them in favour of one set of men.

This comes on at this much.

If they are chosen by the people themselves in Districts, they will have the same local views that the members for the counties have, and

will confine the choice to the District, when better men might be got out of it.

3dly. Chosen by Electors.

Electors chosen from every county, would know the best men in each,

they would mutually give and receive information on this subject;

they would be better qualified to judge of the requisite degree of abilities, and the other qualifications;
bring themselves chosen from every part of the state, they would make their choice as 
diffuse as possible, consistent with a proper selection of worth and abilities; 
and the persons chosen by them would have the state attentive for their object on all 
their measures.

If senate these chosen will not be intimidated by the H. of R. or overawed by 


the demagogues of that house might declaim, menace, and foam, with as little 

impression as the roging billows produce on the solid beach;

Their collective wisdom, knowledge, and virtues cannot be precarious; for by their 

qualifications alone are they to obtain their offices;

they will have no particular views; for they will be educated among and on a foot 
ing with the other people;

one of abilities, without fortunes, will be honoured with that trust;

and wealth will have few representatives there, unless its possessors are really respect 
able for virtue and wisdom;

From their mode of election, it will be all but impossible for unworthy candidates 
to practice with success, the vices and arts by which elections are too often carried;

and the suffrages of the electors being thus free, will be more likely to centre on men 
who possess the most attractive merit, and the most different, and established character;

But if they are chosen by Districts by the people, instead of having better 
men than in the H. of R. they will have worse; and those who are elected will be always under the control of the members of the H. of R., and dependant on them for 
their elections:

Three or four counties in a District,

representatives, two senators;

Virginia District court law never object to any measure of the H. R.

The objection to this is, that the appointment will not be immediately made by the 
people;

A wise people will always be better pleased, that the appointments should nothing 

made by themselves, when they can be better made;

but senators chosen by electors chosen by the people for that purpose, are annexed 
chosen by the people themselves, and by their consent.
as laws made by their representatives are made by them, and with their consent; in both cases he who does acts by another, acts by himself: and the person so elected, is no less responsible to, and dependent on the people, than he would have been if chosen by themselves; and the one mode of election is as consistent with liberty and true republican principles, as the other.

Federalist,

"In a republican government it is essential, that it be derived from the great body of the society, not from an inconsiderable proportion, or a fountain, class of it: it is sufficient for such a government, that the persons administering it be then directly or indirectly by the people.

Montesquieu,

"The people as well as monarchs have occasion, and even more than them, to be directed by a council or senate; but to have a proper confidence in these, they should have the choice of the members; and then whether the electors be made by themselves as at Athens; or by some magistrates detached for that purpose, as on certain occasions was customary at Rome;"

Jefferson,

"The purpots of establishing different houses of representation, is to introduce the influence of different principles, or of different interests. But when the senate are chosen by the same electors, at the same time, and out of the same subjects, the choice falls of course on men of the same description. Where this is the case a state does not derive from a secession of the legislature into two houses those benefits which a proper complication of principles is capable of producing.

3° The time of their service.

It may safely be greater than that of the H. of R. in free countries, the time of service should be in proportion to the greatness of the trust; where it is greatest, the shortest time; where it is less, longer.

The benefit to be derived from their wisdom and experience cannot be obtained in a short time: four years not too long to answer these purpurs;

the experience of America proves that it may be safely be done for that time;
This bill than rotation with a shorter period;
if evil designs or corruption, should once invade the senate,
changing 1/4 at a time will not mend it:
only send new subjects to be corrupted:
change the whole body at once. The whole work to be done over again.
and will once elected become the foremost led and betray the trust.

Once in four years, the people may make an entire change of the people, if their
conduct be such, as to make it proper;
and in every year, they may able to control them by the means of the House, who will
be chosen annually.

Rotation only, office so it leaves a part of the body, whose acquaintance with the state
of the public business, may be given to the new hands;
as long as they conduct themselves properly, a sufficient number will be left of the old men
who, by each new election to answer this purpose.

If they misbehave, and prove themselves unworthy, the public good will be safe in
the hands of entire new men:
The mode of election will insure a continuance of those who deserve it — not like
popular elections.

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The experience of Virginia and Maryland confirm:
in first senate chosen by people in Districts;
in second, by electors from the whole state.

Virginia had confirmed property and land offices, incurred a state debt of 172
million, and still labours under heavy taxes:
Maryland had confirmed property alone, by proper management of it be; she has
a clear annual income of £20,000 and no taxes:

The world and her citizens all attribute it to her senate:
The want of such an one could only have thrown Virginia into a different situation.
Virginia senate shows that wisdom cannot be collected in that way:

Weakest body of men that was ever known.

13. 13.

All the best writers on government concur in the necessity of such a body:
Montesquieu,

"Carthage was a well-regulated republic, as long as the senate-premier Ministir's authority..."
But the virtue of the magistrates, and the authority of the senate both fell at the same time, and then the republic was ruined.

Plutarch—Plato says,

"The establishment of the senate by Lycurgus, did by its phlegm ally and qualify the heat of the government, and always both preserved the state of the C. W. and kept it in good timber. For the state which before had no firm base to stand on, but leaned at one time, to one side, and at another time to the other, finding on this establishment of the senate a counterpoise, which always kept things in a just equilibrium preserved a form order and settlement."

Jefferson 126.

His reasoning applies much more forcibly when the legislative power is one house only.

For we have seen that the consequences of that would be its empowering all power into its own hands:

and the danger must be still greater when there is but one; than it would be if there were two branches of the legislature, because in the last case, they would become, the not an effectual check on each other:
Governor.

5th. Ought to be elected by the people at large; could only be chosen in one of three ways:

1st. By the legislature;
2d. By electors chosen for that purpose; or,
3d. By the people at large.

5th. By the legislature. This mode is contrary to that principle which declares, that to lay a due foundation for that separate and independent exercise of the different powers of government, which is essential to the preservation of liberty: that each department should have a will of its own, and consequently should be so constituted that the members of each should have as little agency as possible in the appointments of the members of the other; and paternalism unreasonably is power; and, as many or body of men who possess in a sufficient degree the means of gratifying the desires of mankind after wealth and distinction, by whatever checks or forms his authority may be limited, or disguised, will direct the management of public affairs.

Whatever may be the mechanism of the political engine, he will guide the motion: One of the principal advantages to be expected from an independent executive is the check it will be of to the legislature; can it be expected that this will be the case, when he is elected by them; and depends on them for his re-election; will he attempt the tyrannical abuse of power in those, on whose feet his existence as an officer depends:

Every officer ought to be so appointed, that a proper discharge of his duty will be the most likely means to secure the approbation of those who have the appointment; and by this means secure his re-election: This is interests on the side of duty, and gives the public every possible chance for his proper conduct: But when the exercise of his constitutional powers, will already the assumed power of
and join offense to, the persons who appoint them;
there is the greatest danger that he will sacrifice his duty, to his compliance to, and his
fear of offending them.

James said as long as he has the appointment of Bishops and Bishops;
he would have what Gospel and Law he pleased.
The experience of Virginia justifies this assertion; for the legislature not only en-
exercise the executive power, themselves when they please,
but when they do not choose to do it themselves, they order the executive in whatever
man, they shall do it;
and there is no instance within my knowledge of a disobedience to their orders:
An appointment of the supreme magistrate by the legislature, opens a door to faction,
intrigue, and corruption:
which as being the greatest curses that can befal a republic, ought as far as is practi-
ble to be guarded against, and not made unavoidable by its form of government:
Thus I conclude that every just principle of government, forbids the vesting of this appoint-
ment in the legislature:

2d. Ought it to be made by electors chosen for that purpose?
This mode is far preferable to the choice of the legislature:
because it will leave the executive independent of the legislature;
because there would be less danger of corruption, intrigue, and party influence to tempe-
tory a body, than there would be of their operating on the legislature; and
because improper men being thus removed from the electors, they would be more likely-
to make a proper and judicious choice:
But notwithstanding these advantages which the choice by electors, possesses over that
made by the legislature,
it may be made manifest, that

3d. The choice by the people at large will be better made, than in either of
the other ways.
In a free country, the people at large define their power to be exercised by others.

1st. Because the exercise of them in person is inconvenient, and;
2nd. Because they can be better exercised, and more for their advantage by their
representatives than by themselves.
As these are the true reasons of the delegation of power by the people, it must
follow,
That whenever the people at large can do any business without too much inconvenience to themselves, and as well as great or greater advantage to the public interest, it could be done by their representatives, that they ought to do it in person, because having the same, or a greater ability to do it, and by doing it themselves, they will avoid the danger of their representatives being corrupted; a danger which exists in a greater or smaller degree wherever power is delegated.

To determine whether the choice can be as well or better made by the people at large, than by any other mode, many things should be considered.

1. The governors should possess a preeminent degree of virtue, wisdom, and experience.

2. The greater the proportion of these qualifications he ought to possess, the more safely may the choice be left to the people.

3. Because, where many men are nearly equal, it may be impossible for the people at large to estimate the order in which they should be ranked; yet when one for superior merit is the next, his superiority will be generally known, and if known will certainly give him the preference with the people at large, when no intrigue or party might prevent his being elected by a representation body.

4. To be proper for his office, he must have acquired a great and extensive education and reputation;

5. Have acquired himself with credit in the trusts both private and public committees to him;

6. These are things which will be generally known, and will have their due weight with the people;

7. This kind of choice will be a means of calling forth the greatest merit, the possession of an obscure or new man.

8. The legislature, or the house of electors, being composed of the better or more important characters in the society will always feel the strongest disposition to keep out all that they have been accustomed to consider as their inferiors. Such an assembly never patronizes such a character, until his superior merit, and the decided voice of the people in his favour have compelled them to do it; and until they find it necessary to use him, when they cannot longer keep him from rising into consequence.

To prevent the growth of some other uncommon genius:
As the Executive will be the weakest branch of the government, it may be essential to its independence to have it chosen by the people.

Having in him the care and execution of the laws, which often involves in it, and makes necessary, harsh and onerous, if he is chosen by any but themselves, they will divine him with eyes of jealousy and fear, but if he is the object of their affection, and presents office by them, they will attribute all acts of severity to the laws; of mercy to him:

This mode of election will cause a due attention to the public good.

A governor chosen by the people at large, and dependent on them for his re-election, must necessarily make the public good his object.

If chosen by any particular assembly, he will transfer his desire of pleasing to them, their wishes and interests:

The supreme executive magistrate ought to receive his appointment from the consent of the people, that pure and legitimate fountain of all legitimate authority.

It is of so much importance to us to have a right to choose our representation, who is only one of 50 who make the laws.

must it not be equally important to have a right to vote for him, on whom alone depends their proper execution.

The extent of this country is highly favorable to this mode of election, it is neither too large or too small, to prevent the people from making a proper choice, when a country is so extensive that one part of the people are stranger to another part, it would be impossible for them to know who would be the most proper man for the office. So too where the country was so small that all the inhabitants could assemble at one time and place to make the election.

there would be great danger to be apprehended, from the effects of intrigue, faction, and tumult:

Here the country is not so large but that the people in general, must be well acquainted with the characters at least, of all who can have any pretensions to such an appointment, and it is sufficiently large to make it necessary to hold the elections at different places so as to prevent the danger from faction and tumult:

For as our reason asserts us, the greater the number from whom the officer is to be chosen, the greater probability there is of finding among that number a fit representative. So also the choice would be less likely to be deviated from him by the intrigues of the am

ations
the bribes of the rich, in proportion to the number of electors was enormous.

This made the best security against bribery and corruption in the choice.

Every representative assembly is influenced more or less by particular characters on it: they may be bribed, and through them those they influence:

but the body of the people being above the resources of any will be tampered with by none.

It will also give the greatest probability of the choice being made, on account of the abilities and virtues of the person elected, without any undue influence from wealth, family, or faction.

Constitute an assembly of representatives as you please to make the choice, and wealth, family, or faction, will more or less influence their choice:

but give it to the body of the people, and the election will not be influenced by them, for they cannot be possessed in a sufficient degree to influence a majority of the people.

By requiring a majority of the electors to vote in favour of one man, it prevents the danger of an improper character's getting in, when a majority did not vote for any of a great number of candidates.

This was the only danger that I could foresee from a choice by the people at large:

and it is guarded against so as still to leave the person chosen by the U. C. on a great measure, the choice of the people at large:

as they must ballot for one of the four that had the most votes and cannot surely be suspected to giving them too much power by those who would gain them the election altogether.

This is given to them in 220 elections of the Dutch because they are more immediately the representatives of the people at large.

Arguments which can be drawn from the evils attending an election monarchy will not apply against this mode of election:

They go to say election at all, and attempt to prove that it is better to submit to an hereditary monarch who will generally be good, and a tyrant because he is born a prince, than to take the chance of getting a worthy ruler by election.

Much to be doubted if such a mode of electing monarchs had been used, if they were used with them at all, has not found it much preferable to hereditary right:

Athens, Rome, and America afford fair examples for us to judge from:

Because in all three the Executive being elective, we may fairly judge from their experience, what mode of making the elections is best:

In Athens and Rome, the appointments were made by the people at large:

and for a good length of time, and until the body of the people, and the whole government
It is declared that they uniformly made the best possible choice; America, Massachusetts, Rhode Island, N. Hampshire, Connecticut, New York, Pennsylvania, and Georgia: it is done by the people: and in Pennsylvania, the mode has been adopted in her new constitution after an experiment made of a different mode of making the choice.

Some of these states are celebrated as having the best governments of any in the union. Montesquieu,

"The people in whom the supreme power resides, ought to do of themselves whatever can conveniently they can, and whatever they themselves cannot rightly perform, they must do by their ministers:

"The ministers are not properly theirs unless they have the nomination of them, in therefore a fundamental maxim in a republic, that the people chuse their ministers, that is their magistrates.

"The people are extremely well qualified for choosing those whom they are to trust, with part of their authority. They are only to be determed by things which they cannot be strangers to, and by facts that are obvious to sense. Should we doubt of the people's natural ability, in respect to the discernment of merit, we need only cast an eye on the continual series of surprising elections made by the Athenians and Romans: which no one will surely attribute to hazard:

"We know that the people of Rome assumed to themselves the right of raising Plebeans to public offices, yet they could not resolve to share them:

"And the at Athens the magistrates were allotted by the law of Arctidus to be elected from all the different classes of inhabitants, yet there never was a case says Xenophon, that the Common people petitioned for employment that could endanger their security and glory.

"This mode of electing the governors ought to be adopted, even it is a matter of doubt which is the most proper:

"because it will be conformable to the habits and inclinations of our citizens.

Every government ought to be made as far as it is practicable, conformable to the habits and customs of those who are to live under it:

The wise of legislatures have been so attentive to this, that in forming governments and laws they have not adopted such as they thought the best in themselves, but such, as was the best that the people from their customs and habits could bear:

Salon being asked if he had given the Athenians the best possible form of government,
I have given them the best government they were able to bear:

Governors ought to be chosen for such a length of time, as will enable him to be really serviceable;

and it ought to be in the power of the people to select him as often as his conduct shall prove unsatisfactory.

The object in creating offices, and in fixing the duration of the office should be the public good;

no office should be created but what is necessary;

and every office ought to be continued in office as long, and no longer than there is a probability that the duties of the office will be better discharged by him than by a fresh hand.

The proper time of the Governor's duration in office,

will depend on the duties of the office;

and on the probable time that it will take to discharge those duties with the greatest advantage to the public:

1. To see to, and be responsible for the due execution of the laws.

2. To superintend the conduct of all public officers.

3. To recommend such measures as he thinks will be for the public benefit, to the consideration of the legislature.

4. To see to the execution of such plans as may be adapted by them, and

5. To call forth, and command the force of the state, to repel any attack made on it, either from within or without.

It will require not only wisdom and experience to effect these,

but also a considerable time to do them effectually.

A considerable time is necessary,

to give him a sufficient degree of firmness in the execution of his office;

to give stability to the system of administration which he may adopt;

to enable him to withstand a faction in the legislature, and the transient ill humours of the people, which will give way in time to the operations of reason;

and to encourage him to encounter the perplexities of intricate business, and the clamours of the interested few:

For a man is always found to be interested in what he possesses in proportion to the firmness or precariousness of the tenure by which he holds it:

and the same rule will hold good as well as to the time in which an office or trust is to be enjoyed, and does with respect to property.
A large proportion of the evils in every country arise from a lax execution of
the laws.

No man can act with vigour when he holds his office for a very short period:
and an annual election of the executive renews the essence of a negligent, partial, corrupt,
administration:

Plans of rational improvement cannot be executed on a sudden:
and a state cannot attain to the degree of happiness and prosperity which
it is capable of enjoying, unless an uniformity of councils, and a consis-
tency of public measures and designs be continued for a length of time.

This benefit will be destroyed by frequently giving the direction of the govern-
ment to a stranger;
whose first care will be generally be to pull down what his predecessor had built up:
and to substitute systems of administration, which in their turn must give way to the more
favourable nostrums of a successor.

Declaring him to be ineligible after a certain time of service, is attended
with still worse consequences.

A man possessed of sufficient abilities and reputation to make him proper for a gov-
ernor,
must either possess, or may acquire a considerable income by the exercise of his
talents.

He will not sacrifice either what he possesses, or what he knows to be in his reach for
an office which he can hold but for a short time:

It cuts off one of the principal inducements to good behaviour.
Ambition, or the desire of a comfortable subsistence, are the inducements of men to
go into office:

They both make them wish a continuance of it,
leave them a hope that good behaviour, and proper exertions, may get them that con-
tinuance;
and they both will be used for that purpose:

But if they know that nothing can keep them beyond a certain time, their exertions
will be leisure;

they may be induced to sacrifice their duty for the prospect of some other advantage;
and they might be induced to take such measures to make profit of their office as they
would have adopted, if good behaviour could have given them a chance of free
appointment:

It will prevent the people from availing themselves of the wisdom and virtue
of an experienced patriot
when upon his services may depend the welfare, if not the existence of their
country. — Washington.
Experience of America proves that a governor may be trusted for a moderate
number of years;
and safely selected when his conduct is approved.

Many of the States — General government.

3. His salary should be competent, the moderate; and so far placed out of the
power of the legislature, that they should not have it in their power, either to
increase or diminish it during his continuance in office.

It is evident that the members of each department of government, should be as little de
pendent as possible on those of the others, for the accidents annexed to their offices;
here the executive magistrate not independent of the legislature, in this particular, in
dependence on every other would be merely nominal.

The legislature, with a discretionary power over the salary and emoluments of a chief
magistrate, could render him as obsequious to their will as they might think proper to
make him.

They might in most cases either reduce by hint, promise, or threat, by long
render at discretion, his judgment to their inclinations.

But as the representatives of the people should always have the disposal of the pub-
lic money,
they should have the fixing of his salary,
but it should be done on his first coming into office, when it would not be increased or
diminshed from affection or hatred;
and afterward, it should be out of their power during his term of service;
Thus they could not weaken his fortitude by operating on his necessities; nor corrupt his ini
tegity by appealing to his avarice.

Fixed on this manner in the General government; Massachusetts, N. Hampshire
Pennsylvania; S. Carolina; 

If he ought to have a qualified negative on the acts of the legislature.
I have already shown that the legislature will have a constant propensity to counse,
aupon the rights and absorb the powers of the other departments;
that a mere parchment declaration of the powers of each is insufficient to restrain
them, and
that there is an absolute necessity of furnishing each with constitutional arms for its
own defence; from these clear and indubitable principles, results the propriety of a negative, either absolute or qualified in the execution, or the acts of the legislature. Without the one or the other, the executive would be absolutely unable to defend himself against the depredations of the legislature:

He might gradually be stripped of his authority, by successive resolutions, or annulled by a single vote.

and thus the legislature and executive powers come to be blended in the same hands.

It affords an additional security against the execution of improper laws, proceeding from precipitancy, passion, or party.

So the senate gives the people a double security against laws of this kind, the governor's qualified negative makes it trifling.

It can never operate to the prejudice of the public, but always to its advantage. Because it only obliges them to consider a measure, and if it approve it, then it is still to be a law.

Whenever the public good demands a measure, this proportion of the legislature will be obtained, as well for that reason, as that the legislature may prove themselves to be more worthy than the executive of the confidence of the people:

It will bring every disputed matter, by the reasons published on both sides, fairly before the people for their ultimate decision.

This negative, from the great weight and influence of the legislature with the body of the people will be exercised, but seldom, and in questions of confessed injustice. This circumstance added to the governor's being elected by the people at large, will prevent them from making their appeal to the people, except in cases where the public good manifestly requires it, and where for that reason he is certain of having the people on his side; and the very existence of this power may often prevent the passing of improper laws by the legislature.

To make this qualified negative highly salutary to the public, it is not necessary that the executive possess more wisdom than the legislature. The legislature will not be infallible, the love of power, the spirit of faction, or the impression of the moment, may make them take improper steps, and such as reflection would condemn.
The other measure is brought under consideration, and the greater the danger, on the situation of those who are to examine it, the less must the danger of those errors which flow from the want of due deliberation or of those mistakes which proceed from the contagion of some common passion or interest. It is far less probable that culpable views of any kind should influence all the parts of the government, in the same moment, and in relation to the same object; than that they should by turns, govern and mislead every one of them. It is also highly improbable that all these will concur either in doing or undoing, unless the public good requires it.

When properly understood, Solomon's saying, that there is safety in a multitude of counsellors, greatly favours this idea, if it were meant to establish that there was greater wisdom in proportion to the number consulted.

100 would have more than 10, and 10,000 more than 1000, but the experience of the world has proved the contrary.

But if it meant that the more different councils it was submitted to, it is an authority in point:

How happy would it be for each of us in private life, if, before we could take any important step, we were obliged to lay our plan before conscientious and wise friends, who, if he disapproves of it, should return the plan with the reasons of his objections, and that we should be able to consider those reasons before we finally resolve to carry the plan into execution.

This power amounts to no more, and why may it not be as useful when employed in public matters, as when in private?

This regulation is the more pleasing, because it appears to be the production of common sense; without the aid of state artifices;

and gives additional security without any additional expense:

The voice and experience of America are in favor of it.

Such a regulation is given to the executive in the General government, that of N.Hampshire, Massachusetts, N.York; Pennsylvania, and Georgia: 

Something very similar, at least on the same principle, was adopted at Athens, with very great advantage to that city.

Montesquieu:

"Solon knew how to prevent the abuse which the people might make of their power in
in criminal judgments. He ordained that the court of the praetors should, in
examine the affair: that if they believed the party accused was unjustly acquitted,
they should accuse him again before the people: that if they believed him unjustly
condemned, they should put a stop to the execution, and make them rejudge the
proceeding. An admirable law, that subjected the people to the censure of the magis-
tracy, whom they most revered, and even to their own:

"Were the executive power not to have a right to put a stop to the encroachments of
the legislative body, the latter would become despotic; for as it might arrogate to
itself what authority it pleased, it would soon destroy all the other powers.
The executive power ought to have a share in the legislature, by the power of de-
xecuting, otherwise it would soon be stripped of its prerogatives.

If the executive power to have a share in the legislature, by the power of resolving, di-
 liberty would be lost. But as it is necessary that he should have a share in the
legislature for the support of his own privileges, this share must consist in the power
of rejecting.

The change of government at Rome was owing to this, that neither the senate who
had one part of the executive power, nor the magistrates who were entrusted with the
other, had the right of rejecting which was entirely lodged in the people.

"Here then we have two examples: one of a state which was greatly benefited by
having such a power in its government:
The other of one which was ruined for the want of it:
Let us have wisdom enough to profit by their experience.

34. Although to have the power in himself alone without a council:

Where the executive body is numerous, being at once exempt from the restraint
of an individual responsibility for the acts of the body, and deriving confor-
dence from mutual example and joint influence, unauthorized measures
would of course be more freely hazarded than when the executive department
is administered by a single hand.

Those who are acquainted with numerous bodies know that they are totally void of them.
each member suffering his part of the current will be distributed amongst the rest.
It is also as certain that men when they have society in a measure will hazard an
act which they would not venture on when alone.

Energy in the execution is a leading character in the definition of a good go-
 vernment.

It is essential to the protection of the community against foreign attacks;
to the steady administration of the laws.
to the protection of property against those in ezgal, and high handed combinations, which sometimes interrupt the ordinary course of justice; and to the security of liberty against the enterprises of ambition, of faction, and of anarchy.

A feeble execution implies a feeble execution of the government; a feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be in practice a bad government.

Unity is one of the principal ingredients which constitutes energy in an executive.

That unity is conducive to energy will not be disputed, when it is considered that decision, activity, secrecy, and dispatch, will generally characterize the proceedings of one man in a much more eminent degree, than those of a greater number; and that in proportion as the number is increased, these qualities will be diminished.

When two or more persons are engaged in any common enterprise or dispute, there is always danger of difference of opinion; and if it is a public office or trust in which they are united, there is present danger of personal emulation, and even animosity.

From hence the most bitter dissensions are apt to spring; and when these happen, they lessen the respectability, weaken the authority, and distract the plans, and the operations of those whom they divide; and may often frustrate or frustrate the most important measure of the government in the most critical emergency of the state.

Men often oppose a thing merely because they have no agency in planning it; or because it may have been planned by those whom they dislike; but if they have been consulted, and happen to disapprove, opposition then becomes in their estimation, an indispensable duty of self-love.

They are likely to act in concert on honor, and by all the motives of personal self-interest to defeat the success of what has been resolved upon contrary to their sentiments.

Fancied prejudices on the executive seem to embarras and weaken the execution of the plan or measures to which they relate, from the first step to the final conclusion of it; and they constantly counteract those qualifications in the executive, which are the most necessary ingredients in its composition, vigour, and expedition.

An evil counsellor or a council would be able to distract and evacuate the whole system of administration.

and if no such cabal did exist, the mere diversity of views and opinions, would alone be sufficient to confine the exercise of the executive authority with a spirit of habitual
A Plurality in the executive tends to conceal faults, and destroy responsibility.

When it is a matter of doubt whether the miscarriage of a plan was owing to the improper manner in which it was concocted by the advice of the councils, or to the improper manner in which it was executed by the governor; which of them shall bear the blame? or, amidst their mutual accusations who can determine, who were the real authors of the precious measure, or series of preposterous measures which have been adopted, so as to make sense and proceed honest fail where they would be due:

Then a plurality tends to deprive the people of the two greatest securities they can have, for the faithful exercise of its power.

1. The restraints of public opinion, which lose their efficacy as well in account of the division of the council, attendant on bad measures among among a number as on account of the uncertainty on whom it ought to fall: and

2. By the opportunity of discovering with facility and ease, if the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which merit it:

In a republic every magistrate ought to be personally responsible for most

harbour in office:

But a council to a magistrate who is himself responsible, for what he does, are generally nothing better than a clog upon his good intentions; are often the victims, enmity and accomplices of his foes;

and are almost always a cloak to his faults:

So a council will cause a great addition of expense in the government.

Whatever expense is really necessary must be submitted to,

but in a country whose resources are so scanty as ours are, no measure should be adopted when it's utility is more than doubtful;

and when the expense attending it will be certain and great:

for to make them answer the purposes expected from them, they must be a standing body, with annual salaries:

This unity of the executive can never be dangerous in a government, where,

1. The governor has a due dependence on the people,

2. A due responsibility to them, and,
3. Where his powers are so defined, that it may be always known with certainty when he exceeds them:

His dependence on, and his responsibility to the people's will, be as great in their government as they could possibly be made, as he will not only depend on them for his election but also for his continuance in office;

and his powers and duties will be precisely marked out by the constitution and the laws that they will cause as land master sufficient to discover the smallest annoyance, neglect:

The executive is most easily restrained and kept in due bounds when it is one. As the executive is one where there is but one, may with certainty be fixed on him:

so as it will as certainly be known, that the remedy must be applied to him alone; and suspicion and jealousy being always awake, as to him, they may and probably will prevent and stop at once any improper conduct.

The opinion and experience of America are both in favour of this unity in the executive:

At first councils were admitted in all their governments except those of New-York and Jersey:
The experience of those states and more accurate reasoning on the subject, have convinced them that on this they erred.

and the new constitutions of Pennsylvania, S. Carolina, Georgia, and New-Hampshire have remedied them after having formerly been a part of each of those governments.

And the General Government has no such body:

In England, the executive power is in the King alone:

he may constitutionally exercise any part of his prerogative, without the consent of any body whatever:

But as it is a maxim in that government, that the King can do no wrong, and of consequence is not responsible for his conduct, he is obliged to take the opinion of what he calls his council on any subject before it is executed;

and the opinion is entered in their proceedings,

but after that opinion is given, he may follow it or not, as he please.

Therefore the King is always said to determine in council, are not by the consent of the council.
This regulation proceeds from the King's not being responsible for his conduct and from the idea that he will be influenced in his acts by the opinion of some of his ministers or servants, obliging them to enter on record the opinions they do give him offers a contrivance by which to trace the authors of bad measures: who, when such known are liable for all the consequences of those measures.

Such a regulation must be altogether unnecessary where the governor himself may be impeached and punished for any mal-practice in office.

But the proceedings of the executive ought to be recorded, that they may be referred to when necessary, both for public and private information.

This purpose sufficiently answered by having a secretary, whose duty it shall be to keep on record all his proceedings, to attest all his public acts, and when required to lay these proceedings before the legislature.
Government ought to be examined for a long time.

1st. Because of the difficulty and uncertainty that there is of making a good one of the first experiment, and

2nd. Because from the peculiar situation of this country, if the government were made should be adapted to its present situation, there is the greatest probability it would not be so, in which it will be some years hence.

One of the best proofs of wisdom is the sense of our want of it; and they who know most possess most of this sense,

and it is a certain truth that we are most俊issimous when most in the wrong answers for ourselves most enlightened when most in the dark.

Therefore we ought not to endeavor to fix the result of our fallible judgments on our constitutions, so that they will not have it in their power to change what we do without a revolution, and we ought from a just distrust of our own abilities, to point out some mode by which our errors may be corrected.

The science of government is so abstruse, that the most comprehensive mind cannot see the effects and full operations which a new form will produce:

Political regulations commonly produce many effects besides those that are intended; the direct consequences are often the least important, incidental, remote, and unthought of evils frequently exceed the good that is designed; or the inconveniences that are foreseen.

Therefore experience can only be the sure test by which a people can judge of the real qualities of a government:

No form of government has any value, credit from its being fitted to the attainment of the public good, and the happiness of the body of the people: Therefore, the solid happiness of the people ought not to be sacrificed to the preservation of a government of a different kind;

but all forms ought to be made to give way until that happiness is really produced.

Most of the strength and efficiency of any government in preventing and securing happiness to the people depend on the general opinion of the goodness of that government:

Therefore to attempt to keep in force a government after it has lost the good opinion of the people, must either be in vain, or be the cause of the people's unhappiness;

It is the inalienable and precious right of the people to alter or abolish their governments as they shall seem most likely to affect their safety and happiness.

As we cannot govern succeeding generations, neither have we any right to say how they
shall govern themselves.

It is the sum of human variety and shows a consciousness of power beyond the grave, to,
be dictating to the world to come:

It is sufficient that we do that which is right in our own day, and leave them with the ad-
vantage of good examples;

They will have the same right to judge for themselves that we have to judge for ourselves.

The making a government for a domestic time, would probably make it last longer
than if we were to say it should continue forever.

Mankind will generally submit to a temporary evil, rather than encounter the difficulties -
and danger of remedying it;

The opportunity that this would give of revising the government peaceably,
and the recollection of this which would always exist,
would be a means of keeping down and preventing any bad consequence which would arise
from the ill humour which would naturally prevail in a government not agreeable to the bulk
of the people, and

Thus giving the government limitations, would be to give it duration.

The frame of every government ought to be adapted to the manners and customs of
the people who are to live under it:

The government most conformable to nature, is that whose particular disposition, best agree
with the humours and habits of the people for whom it is to be established.

Every people ought to have a particular form of government, not always the best in itself, but
the best adapted to that state for which it is calculated.

Therefore the real legislator will always make manners, customs, and public opinion, the

great objects of his attention:

He's will make it dangerous in any country to fix a government, which may continue the
same;
after the manners, customs, and opinion of the people have changed;
but in an old settled country, fully peoples, where the manners & of the son are generally the
same with those of the father,
it may with much greater propriety be done, than in a country, where the people, and their
manners vary in some measure every year.

and where no man can pretend to say what they will be seven years hence:

In forming a government, a regard ought to be had to the number of the people which
the legislature may hope to draw from other countries by the advantages to the
advantages attending his scheme of government;

so that he ought not to found her government on what actually exists, but on -
what he may doever may exist hereafter:
not on the customs, habits, and numbers of the present inhabitants, but of those that
will be hereafter;
This cannot be done but by making the regulations temporary;
if we could now foresee what alterations of people and manners would take place, and
make the government to suit the country, after those changes had happened; it
would not suit the country until those changes did take place.
But by making a temporary government to suit our present situation,
with an opportunity of altering them, when the changes may take place.
It will always be adapted to the manners, customs, and number of the people.

Forming only a temporary government now, will be a great means of encouraging
emigration to the country.
Nothing but disappointments will force a man not compelled by other motives, to leave his native
country, her friends and connections;
But the attachment of mankind to those same objects, the toils and care of seeking new habitations,
and being away strangers, will,
if any capital objections can be made to the government of a country to which they have a right
of removing, outweigh all the considerations which a foreign country can offer.
The opinions even of the corrupt of men are so equally divided upon political questions,
that what will appear beautiful and right to one
will be deformed and wrong in the eyes of the other:
Let your government then be what it may, it will probably displease as many as it will
satisfy,
and if it is fixed will prevent numbers from coming to the country;
Especially those whose manners, habits, and opinions, are different from the present inhabitants of their country:
But make it temporary only, and it will stop none from coming,
those who like it, will expect it to be continued;
those who do not, that it will be altered:
Those who differ from us in manners, customs, and opinions, will come out,
with a just expectation that on accommodating the government, a just regard will be paid to
them;
so as to adapt the government as far as is possible, to the minds, manners, &c. of the whole community:

Public good requires it, as by this means, the door will be left open to the combinations
which a perpetual government will shut in most offices &c.
This may have great effect on emigration, and on such emigrants as will have it most on their power to improve the country; it will also put it in the power of the community to select the best of characters to act in the country at the end of seven years, instead of those having their offices filled only with the best we now have here.

Those who are acquainted with the falsehood which are propagated to the extent of emigration to this country will be fully convinced of the propriety of fixing our government in such a manner as will give us, in them, as little room as possible to calumniate us.

As all government is derived from, and exists for the benefit of the people at large, they should by the government itself, have a power given them to change it, if it does not promote their happiness:

When the happiness of the people, and their liberty, is at stake, what reason can be assigned that they should be bound forever by an extinct government?

If a legislature had the power, would they not be thought need to pass a pernicious law on a subject of so importance?

If this is not foreseen by the constitution, there will be but little probability of changing the government, however oppression it may prove, but by violence:

When this is not the case, any proposition for an alteration always causes an alarm, and an attempt to reform is represented as an attempt to destroy;

by those who have a self-interest to preserve the rotten constitution;

by those who from prejudice mistook its decay for beauty, and

by those who will be operated on by their fear;

by the consideration of the necessity of some government or other;

by the certain mischiefs of civil commotions; and

the danger of settling their country better, if at all, of they once let loose the present government:

And their opposition will either produce convulsions in the State, or a submission to the greatest abuses.

In a free country where all power is derived from the people, there can be danger either to the public tranquility or to the public liberty by apprehension from the periodic removals of the government.

The idea of danger from changes in government have proceeded from what has happened where revolutions have been brought about against a king, a tyrant, or an aristocracy therefore do not apply here.

The experience of governments like ours in our favour.

Pennsylvania, S. Carolina, Georgia, and N. Hampshire have changed without it being
known on the other states.

The federal government too which was so much despised was aquired en as soon as adopted:

first constitutions in America were made perpetual, without ever being left open to alteration: the last have all some plan or other, by which such alterations may be made:

however it depends on the people at large, where all have the same interest, and the only dispute arises from what is most for the public interest; the minority will always acquire on the determination of the majority:

To design can be approached to liberty from this notion; for as long as the principles of liberty are unprofit to the government, every alteration will tend to give it additional security: a revolution formed by liberty becomes a confirmation of liberty.

Kentucky can never be called on to consider the subject with more danger to peace than the present.

great party against a separation, and of course against a new government; this party has caused great animosities, suspicions, and jealousies:

important idea of business of convention -- monopoly of land -- right of suffrage -- inequality of taxes -- exorbitant taxes Salaries -- despot of rich to oppress poor.

yet no convocation, disturbance.

If this notion of the government is to be had, it must be,

3d. By the people before adoption:

The people have an undoubted right to decide for themselves, but it should for their own interest be done at such a time and manner as will enable them to decide with propriety: if left to them they must either refer it to new convention, no better or worse than this -- without the experience of effects to guide them: or to committees:

This deprives the country of its unity will and judgment: who will gain mine different sets of instructions, which must prevent any agreement in a general plan:

Commended only answer the purpose.

of setting clean of the people at large; and representatives chosen by them:

Substitute to these men who men would be consulted or called on by a county at large:

2d. By the legislature:
They cannot be trusted:
if the government is so farmed as to check ambition, and check the improper exercise of
power—

or it will be displeased, and people fired of it:
if on the contrary it contains no sufficient checks, the rulers will be fired of, and the people
hate it:
Then in one case the rulers will make a change when the people are against it,
and in the other prevent it when the people are desirous of it:

Amer. Federal Government:

3. By a body chosen for that trust.
Money, Council—Legisl. — Party—Faction—

4. By a convention, which must meet at a certain time:

It being settled that there is to be a convention at that time, removes all disputes about the
propriety of it:
As that convention will be chosen by the people at large, it will consist of men who think
of the old government, its defects and advantages as they do:
attractions will not then depend on the few, but the many;
not on the rulers, but the people.

If a great change takes place in our customs, manners, and manners,
this will ensure to new-comers their proper weight in the new government:
if left to any body of men whether then shall be a convention, the present set may prevent
it:

as they would feel an interest against a change, which would let the oncomers into any great
participation of privileges:

Home.

"To balance a state or society, whether with Monarchical, Republican, or General laws is
a work of so great difficulty, that no human ingenius, however comprehensive, is able to
the main-draft of reason and reflection to effect it: The judgment of many must unite
on the work: experience must guide their labours: time must bring it to perfection:
and the feeling of inconveniences must correct the mistakes, which they inevitably fall
into, in their first trials, and experiments:"

Thus reason and experience both their
That it will be most favorable to liberty, and
conserve most to the public good:
for us to form the best government that we can devise for a limited time; and
that the people at large, after having its defects and advantages ascertained by experience,
should be called on to adopt, to change, or amend it.
Slaves.

This convention, departed by, to make a government for the free men of this country;

a proposition is made to them, that they should in the constitution they are to frame

declare

that a number of persons who by the laws of Virginia are slaves,

who have been bought as such under the sanction of those laws, and

who were expressly excluded from voting for the member of this convention,

are entitled to the privileges of freemen, and that they shall be discharged from slavery

without any compensation being made to their present owners.

It would be improper and unnecessary to go into the right and origin of slavery.

for us to determine that that is wrong which has existed in the world from the

earliest period that we have any accounts of,

which particularly prevails among the chosen people of God, and which was regu-

lated by laws given them by him;

and which the it existed in full force at the time of the revelation. is nowhere ex-

pressly forbidden by it:

All that we are to do, is to consider,

1st. Whether this convention has a right to adopt such a measure: and

2nd. If we have the right, whether justice and policy make it proper for us to en-

force that right?

Though we are to form a constitution, there are many important points

already settled, among them is the right of property:

This right is secured in the whole, or not at all:

the convention either have a general power to destroy or curtail it, or they have none:

If a general power why stop here, divide land, then stocks and personal pro-

perty:

This measure forbid by the contract with Virginia:

All private rights, and interests of land, within the said District derived from the

laws of Virginia, prior to such separation shall remain valid and secure, under the laws

of the proposed State, and shall be determined by the laws now existing in this state:
This both within the spirit and letter of the compact:

The letter,

"It is a private right, and that right is derived from the laws of Virginia:

The spirit,

The intention must have been to secure the right of property generally against the effects of a change of government;

It so concludes this with the others:

If not it gives security only to the land holders,

The one construction is liberal, and supposes the legislature to have had just and general ideas:

The other confined, and supposes them to have been actuated by partial and self-lost motives.

The security of property is but little or much, or to whatever it may belong, to the one of the chief ends of government:

If the right of property be not of the nature of those we receive from our creator, yet the security of them is among the great objects of civil society:

and if in governments formed for the protection of property, it is not sacredly secured, the very end of government is violated:

liberty consists only in the domain of equal laws, made with common consent, for the general interest, and the public good:

If then a law is not made with the general consent, or if it is not equal in its operation,

it is an oppression and an unjust law, even though it was passed by the entire nation assembled:

and what the people at large could not do, cannot be done by us as their representatives, because it is a settled principle that the representatives of a people can receive votes only as they may be confined to do less than the people at large can do:

The law then would be contrary to our liberty;

because it would not be equal:

It is a settled principle in all free governments, that the nation has no right to deprive an individual of his property unless it is essentially necessary to the public good, and that only after a just compensation has been previously made to him:

liberty consists in a great measure in the exclusive right of property on the gifts of for
term, and all the various fruits of man's industry:
Those who in any instance destroy this right, do it in a case which may appear favourable
to personal liberty,
and let us consider that by doing it in one instance, they break down the barrier which
is the security to property:
and that will open a door, and make a breach, at which tyranny will one day
enter.
Considering regards, these as our laws have always done as the property as the fruit of man's
years' industry: as the reward of labour, sweat, and toil: as the endow' our slavery, and the con-
various means, and as the means of making old age a scene of rest, their owners have as
right on them too sacred to be spoiled with:
and a property which none but a tyrannical government can deprive them off, unless it
shall be judged absolutely necessary for the public good,
and then only on paying them for it:

Government of Kentucky is to be considered as standing on the place of the go-
overnment of Virginia, how thorough this question to be stated between govern-
ment, and the owners of slaves?

Are men by her laws declared them to be property, and as such they might be bought, and
sold:

that the owner should have this property secured to him as effectually as his land, or any
other species of property:
the now says, that she (Virginia) was mistaken when she passed this law, for two
reasons, one of them:

1. That no power had a right to make them slaves.
2. That if they had that power, that it was contrary to their true intent, to allow
and therefore they will now declare them all free.

What does justice say on this occasion?

admitting both propositions to be right: yet
as the owner was induced by her act as she now confesses, was wrong to give their money
for this property:
if a loss is to be sustained, it ought to be by the state, which was the original cause of war,
whether they are now to be elevated upon a principle of right, or a principle of policy.
Thus if government deprive the owner of this property, they must from the general princi-
ple above stated, pay for it:
and also for this additional one, that they have been the means of the loss of the indivi
dual: Man may evert the fact that in the present condition of the
in the use many to come, many to form schemes of
of injustice, and confusion would arise from such an abuse -
whether the owner hold them from a tenant, or by purchase,
very common for parties to give land to one or part, and require to the other;
discharge them, and then the one that had land, far one, the rest nothing:
If a man has purchased them, and the law discharge them, because it is wrong and
illegal to hold them in slavery, the vendor has no good title, and the purchaser may
come upon them again for the purchase money:

A good hint to those who have sold on purpose, and have clamored:

It is of great importance in a republic, not only to guard the society against the
oppression of its rulers, but also to guard one part of the society against the
oppression of the other part;
and it is a principle founded both in reason and liberty:
that the same persons should not be both judges and party;
This measure violates both these principles:
As a small part of the citizens only, own slaves, they will be oppressed by the act of the
majority, who having no property of that kind, have no fellow feeling in the steps which
they will take:
and as the measure is supposed to be for the public good, which must also, of course for
that reason, be for the benefit of the majority;
if they adopt the measure, they are by that means depriving themselves of a benefit at the
expense of the owners of slaves;
and without contributing anything towards it themselves:
If this practical proceeding is admitted, every similar conduct will be received when none
majority can fall on a plan to make the minority
pray for a public benefit:
And those who would be in the majority on this occasion may be in the minority in most
others:
Every citizen is therefore equally interested in preventing such measure, otherwise our
government and laws instead of being founded on justice, will be founded on faction
and instead of being a republic of free citizens, we shall be alternately tyrants and
slaves.
But it is intended to bring them about by degrees: it is in vain;
Still the objection as to the right of doing the thing is the same:
Governments have no more right to take away property from one 20 years hence, than now:
no more right to say that I shall lose the child than the mother;

This more than what was either to be done with old negroes 20 years, a half of those now alive
will be a charge;
Those born afterwards discharged;
The owner must work to support them, or
let them rear every necessary of life, as many friends to emancipation would:
The modification of the plan is an insult to our understanding;
and a tenitory for measure proceeding from the base, and not the justice of the proposers.
They know that they dare not emancipate — — 50 feet gallons:

The friends to emancipation demean themselves and the world, if it suppose
they are actuated by principles of justice in the present plan:
It is impossible this can be the case! They must consist of one of two kinds of persons

1. Those who have slaves; or

2. Those who have none

Those who have them cannot be in earnest or believe what they say as to their rights, or
they are very bad men;
otherwise they would avail themselves of the knowledge given by law, and emancipate them now;

a fellowship on full oarrs, will never justify it:

Those who have none

cannot be actuated by real motives of justice;

otherwise as members of the community they would be willing, that this measure which
they declare to be so much for the public good, should be done at the public expense;
Thus they are utterly opposed to — butter products when it is mentioned: — Patterns of
Philanthropy, and generosity: — when they can be practiced at other men’s expense:

Reminds me of two passages — one may some heard:
will not steal, neither to make poor men’s shoes;
the kindest hearted, most generous creature in the world, he would as any time steal from
one man to give to another.
Justice not being the motive for their conduct, when traced to its source, it will be found to proceed from envy — and a desire of opening the door to speculation; and a means of getting their labour done by those who will be more easily imposed on than the previous set of labourers:

But the favourers of the scheme say, that although it does not infringe on the right of property; yet as it is to support the right of personal liberty, it is justifiable; as the one right is superior to the other, the one being derived from our great creator, the other not.

Different answers may be given to this:

1. Supposing this right to liberty to exist, and that it is proper for the community to support it, they do not cherish because the country may do it if they please, on the prayers of their masters a just equivalent:

2. Their natural right are not a subject proper for our enquiry:

Because government is a compact only, between those entering into it; one because their claim of a just one is derived from a source independent of government altogether.

From the very nature of a compact, none but those who are parties to it can claim any rights.

And therefore, as they are not parties to it, they can have no right under it, and as they were considered as property prior to the existence of the government, can be belonging to those who are parties to the compact, and as one of the principal ends of the government is to secure the property of those who enter into it.

Therefore the right to their property ought to be secured, and not destroyed by the government.

The very reasoning of the favourers of the scheme, defective itself, because it proves too much:

All men (say they) are by nature free and equal;

these men being equally inhabitants and possessors of this country with us;

if they are free and equal with us, have an equal right to a share in the government, that share should be in proportion to their number, which is to:

But they have been totally excluded;

Therefore as the rest of the people of this country, all being equal, have been excluded from making the choice of those who are to make a government for the whole,
it must follow that we have not been legally elected, and have no power to proceed:

Let us carry the idea still further:

The general government deriving its power from the state governments,

and most of them having slaves in them who are excluded from all share in government;

each of those governments being void because of that exclusion;

the authority derived from them to the general government, must be void also;

If these are their natural rights, how can we reconcile it to ourselves, to say that all who are

now in existence, shall continue slaves;

and that those born before a certain time, shall be to 10 years:

and for another 20 years:

The proposition contains so many absurdities, and contradictions in itself, as must be suf-

sufficient to destroy it: Any step of the kind by men whose names are well

and never more can they be thought

entitled to destroy it.

If it is right and proper here, it must be so every where else, and in each of the

other states:

Let us trace its consequences:

In. So. Carolina, the slaves are more numerous than the whites:

if they were admitted to the rights of citizens, and they must be as soon as they be-

come freemen, that would probably happen again which so mentioned by

Shakespeare,

Among the Volontarios the freedmen becoming masters of the suffrage, made another

menable law which gave them the right of lying first, with the girls married by the Greg

bous.

One cause of so improper a proposition being made, is that it is not

what capacity, and by what authority we are acting;

We are acting as the representatives of the free men of this country, by the authority of those

freemen,

and for the purpose of forming a government,

to secure their liberties,

and protect their property:

It must be totally improper that for us under our ideas, that a part of that property be held with

out sufficient authority, or contrary to natural right:

so direct them of it without their consent, or without paying them an equivalent for it:

If we have a right to indulge such considerations, the claim of the Indians to

the whole country will be founded equally upon the land:
with that of the respect to their liberty:
do not let us be good by halves them:
or pride ourselves on justice to one set,
when we are holding without right another kind of property from greater numbers;
let us break up without forming a government; acknowledge our selves all to be
remonstrance to our constituents to abandon the country to it's proper owners;
and advise the negroes now become freemen to form alliances with the true proprietors of the
soil:

From whence does this proposition proceed? from the supposition of conscience of the
proposer, respecting the propriety of keeping a fellow mortal in slavery.

It is then a business on which conscience alone is concerned;
and can be more truly the proper subject for government, than any other question depending on it:
That it would be improper in us, situated as we are, and in the character we are acting,
to consider them in any other light than as property,
will appear from Montesquieu,

"There are different kinds of laws. The law of nature. The common law. The laws of
society. And the particular political laws which relate to each society; the
sublimity of human reason consists in knowing, to which of these orders the
things that are to be determined ought to have a principal relation, and to those into
which those principles which should govern mankind:

"We ought not to decide by divine laws, what should be decided by human laws, nor do
termined by human, what should be determined by divine laws."

Also 2d. Vol. Aug. 1703. he says,

"As men have given up their natural independance, to live under political laws,
they have given up the natural community of goods, to live under civil laws:

"By the first they acquired liberty; by the second property. We ought not to decide by the
law of liberty, which as we have already said is only the government of the community,
what ought to be decided by the law concerning property. It is a paradox, to say that
what the good of the individual ought to give way to that of the public; this can never, take
place but when the government of the community, or in other words, when the liberty of the
subject is concerned. This does not affect those cases which relate to private property
because the public good consists in every one's having that property, which was given
him by the civil laws, immutably preserved."


"Ceno maintained that the Agrarian Laws were unjust; because the community was constituted with no other view, but that every one might be able to preserve his property.

"Let us therefore lay down as a certain maxim, that whenever the public good happens to be the matter in question, it is never for the advantage of the public to deprive an individual of his property, or even to restrain the least part of it by a law, or a political regulation. In this case, we should follow the usage of the civil law, which is the protection of property.

"Thus when the public has occasion for the estate of an individual, it might never be actuated by the usage of political law; it is here that the civil law ought to triumph, who with the eye of a mother regards every individual, as the whole community.

"If the political magistrate would erect a public edifice, or make a new road, he must indemnify those who are injured by it; the public is in this respect like an individual, who treats with another individual. It is full enough, that it can oblige a citizen to sell his undivided estate, and that it can strip him of this great privilege, which he holds from the civil law; the not being forced to alienate his possessions.

2. Supposing we have the right; does justice and policy make it proper that we should ever use this right?

This will not appear to be the case, whether we consider the proposition as it will affect the negroes themselves, or this country:

The negroes themselves;

By the proposition more are to be brought into the country, and all born in it after are to be free;

thus the number of slaves in Europe, or even in America, by the first great law of nature, in the possession of the whites.

By the second, those who were born here, hereafter will be put out;

so that the amount of both will be;

That those who would be slaves in Kentucky, if the regulation does not take place, will be slaves in some other part of the world, if it does;

whether the change would be for their advantage, is at least doubtful.

and if we add to this doubt the certain injury to their feelings by the separation from their connections, which must be the consequence of it;

we shall be satisfied that it will add to their unhappiness.

As to the country;

The happiness and prosperity of a country depends on the happiness and prosperity of..."
the people who live in that country.
To determine whether a particular measure will be for the public good,
it should be measured by the advantage which each individual will receive by it,
and the number of those who will receive it.
A public evil is determined by the injury it does to individuals; and the number of
those to whom the injury is done.
According to these rules, it must be prejudicial to this country to emancipate them:
whether the owners be paid for them, or not;
if they are to be paid for it must be by taxes levied on all;
if they are not it must be a total loss to the owners.
And in neither case will any free citizen fairly obtain a striking advantage by the measure.
Slaves are useful in a country where free labourers cannot be had in sufficient
numbers;
and are prejudicial to a country when they are so numerous as to be a means
of excluding free labourers.
At this time, notwithstanding the scarcity of money here,
and notwithstanding the number of slaves that we have,
The price of labour is double what it is in any other part of America:
and I have never heard of one man's eating work.
The price of labour is so great here that no farmer can afford to leave his farm
by hiring;
what then would it be if we had no slaves, from the additional demand it would make
for their labour.
Let it be in the present state of the arts of the Bibles.
This peculiar situation of this country will always prevent our having
such a number of slaves as will be prejudicial to it:
great numbers of slaves will never be introduced into a country, but
for the purpose of parade and show; or
where the produce of their labour will be a means of enriching their owners;
The mediocrity of our fortunes will prevent them being brought here for parade or show;
and our remote situation, and the low price of our commodities consequent on it,
will always prevent their owners from making a profit of them.
That this will be the case will appear from their comparative number in
in the different countries, and the productions of more countries.

The West Indies — South Carolina: —
Georgia /3: N. Carolina /4: Virginia between /2: and /3: Maryland /3: Kentucky /6
This proportion can never injure the country,
and as we have no reason to suppose that a greater proportion of them will be introduced by new immigrants than by the old ones,
and may fairly reckon on a great number of being emancipated, by the generous spirit now so clamorous,
we may fairly conclude that the proportion will be less hereafter than it is now:

The great object of the government ought to be the encouragement of immigration to the
country,
but the introduction of slavery will not only put a stop to future emigration;
but also lose us great numbers of our present inhabitants:
Few emigrants will come immediately from Europe to Kentucky
our principal dependence must be on Americans:
for of these states have a large proportion of slaves,
Few men (except the merchants) in either of those states, but what would have been accustomed to their services, and to depend on their labors:
including slaves from this country,
amounts to a prohibition of all these states, except those who are among the poorest of their
inhabitants.

The people in the N. States turn their attention to the other side of the river on account
of the cheapness of the land:
a great many of them who are now here consider themselves as sojourners here, and on the
s. side of the Ohio as their ultimate residence:

Blount's government makes our situation more dangerous;

By thecession of that country by North Carolina to Congress, slavery can never be prohibited there:
That country possesses most of the advantage of this;
if the door is shut to this country:
The inhabitants of those states must all turn their attention there:
and if any regulation to deprive the owners of slaves whowice here here should be made:
the great number of our present inhabitants will remove there, rather than lose their property.

Owner of land is much interested in those effects, as the owner of slaves.

Of what value will our land be now, except what we can work ourselves.

unless there is a demand for it.

stop emigration, and that will cease entirely:

Experience has shown us that the slaves in Virginia, N. and S. Carolina, and Georgia don't stop the emigration from the N. western counties.

Slaves are particularly useful and necessary in such a wilderness as we have.

Not only as they improve the land,

but as by their labour, they make improvements, which induce the wealthy farmers from there, to purchase here, who find their advantage in it, as they get land and improvements for the value of the land.

If they are emancipated, they will debase us a people, and corrupt our

laws and manners.

Many will acquire wealth;

That will bring about extravagance.

What will be our situation if they form such connections, have a right to sit in our courts, at elections etc.

Nothing but their disabilities have prevented the mischief.

Remove them, and none can say where it will stop.

Price.

"The members of a civil government, are confeederates, not subjects, and their rules servants, not masters.

All legitimate government consists in equal laws, made with common consent:

"A man who is oppressed by an unjust law, is not free, tho' the law was passed by the entire nation assembled;

because in fact the individual has certain rights which the nation cannot take from him, but by violence, and an illegal use of the general force."

Common Sense.

"The administration of a republic ought to be directed by fundamental principles, from which they cannot derive, because there ought not to be any deviation, and whenever any deviation appears, there is a kind of stepping out of the republican principle, and an approach towards the despotic one."

"A representation assembly are supposed to enact the same laws, and pursue the same
Tours of administration as the whole of the people would do if they were assembled together.

"When a people agree to form themselves into a republic, it is to be understood that they mutually resolve and pledge themselves to each other, rich and poor alike, to support and maintain the rule of equal justice among them. They therefore renounce not only the despotic form, but the despotic principle, as will of governing as being governed by mere rule and power, and substitute in its place a government of justice.

"By this mutual compact, the citizens of a republic, put it out of their power, that is, they renounce as indissoluble, the power of exercising at any future time, any species of despotism over each other, or doing a thing not right in itself, because a majority among them may have strength or numbers sufficient to accomplish it. In this pledge or compact lies the foundation of the republic: and the security to the rich and the consolation to the poor, is that what each man has is his own, and that the government itself cannot take it from him."

Rousseau.

"A citizen is bound to perform all the services he possibly can, of a state, where the state demands them, but the state on its part cannot require any thing of the citizen that is useless to the community. The engagements, in which we are bound to a community, are obligatory only because they are mutual. The general will in order to be truly such, must be such as to affect as well as in its essence, that it might to flow from all in order to be applicable to all, and that it must lose its natural authority, when it extends to any individuals, and determinable object; because judge up in such a case of what is foreign to ourselves, we have no principles of equity for our guide.

"Blackstone.

"The third absolute right, inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. The origin of private property, is probably founded in nature, as will be more fully explained, in the second Book of the ensuing commentaries: but certainly the modifications under which we at present find it, the method of conveying it to the present owner, was of translating it from man to man, entirely derived from society, and are some of the civil advantages, in exchange for which every individual has resigned a part of his natural liberty. The laws of England are therefore, in point of honor and justice, extremely}
watchful in ascertaining and protecting this right.

So great an object is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be enormously beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In such a case, it may be urged, that the good of the individual, ought to yield to that of the community; for it would be dangerous to allow any private man, or even public tribunals, to be the judge of this common good; and to decide whether it be expedient. Besides, the Public good is in nothing more essentially interested, than in the protection of every individual's private rights, as meddles by the municipal law.

In this, and similar cases, the Legislature alone, can, and indeed frequently does, interfere, and control the individual in question. But how does it interfere, and control? Not by absolutely depriving the subject of his property in an ordinary manner: but by giving him a full indemnification, and equivalent for the injury thereby sustained. The public is now considered as an individual, dealing with an individual for an exchange: All that the Legislature does is to oblige the owner to eliminate his possessions for a reasonable price; and even this is an exaction of power, which the Legislature endeavors with caution, and which nothing but the Legislature itself can perform.
Consider,

Their necessity and importance:

2. The proper manner of constituting, and organizing them:

3. How far their ought to be settled generally, by the constitution of a country, and

4. What regulations are made necessary by the peculiar situation of this country:

Their success and importance:

The first maxim of a free state, is that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial character be kept separate. When these offices are vested in the same person or assembly, particular laws are made for particular cases, springing often times from partial motives, and directed by private ends:

whilst they are kept separate, general laws are made by one body of men, without any bias or they may affect:

when one must be applied by the other, let them effect whom they will:

This was not the case, the citizen would have either without any known previous stated rules of adjudication whatever; or union laws made for particular cases or particular persons, and pretending of the contradictions and iniquity of the motives to which they owed their origin:

Which diseases by the division of the legislature has judicial functions are effectually provided against. The legislature knows not the individual upon whom its acts will operate; it has no cause, no parties before it; no private designs to serve; consequently its resolutions will be suggested by the consideration of universal effects and treason, which always, produce uniform and commonly advantageous regulations:

When laws are made, courts of justice whatever may be the disposition of the judges must conform to them:

The judiciary ought to be considered as the guardians of the constitution, and as the only protection against the encroachments of the other powers, upon the line of rights.

In vain would the constitution say, That no law should be past, to violate the rights of conscience,

That no person should be punished but by the judgment of his peers, and the laws of the land etc.
Unless there was some Power that could say that all acts which attempted to enjoy these rights were void:

This power could be vested no where but in the Judiciary,
and they are in the exercise of this Power, the only sure guardians of the constitution:

All justice comes from God. There is an universal justice springing from reason alone; but in order to admit this to take place among mortals, it should be reciprocal:

Manners of Justice are vain and fruitless, for want of a natural support, they are only to the advantage of the rich, and the disadvantage of the just, while the latter regard them in his behaviour to others, but nobody regards them in their conduct to him:

Laws therefore are necessary in order to unite, unite with privileges, and confine justice to its proper object:

But laws are useless without courts to enforce & define, they have meaning and operation:

therefore no government can exist without courts:

for ex. vain would rights be declared, or vain directed to be observed, or vain would wrongs be prohibited:

if there were no method of recovering and assuring those rights when wrongfully withheld and inundates:

and no mode of obtaining a redress for injustice when committed:

The honest man can dread a Power that is to enforce justice: but the dishonest, are ever apprehensive of that Power that will oblige them to do what honest men are ready to do voluntarily:

Courts are essentially necessary to preserve the Peace of Society:

When men live together there will be disputes:

when there is no superior to appeal to, these disputes will end in strife and contention:

But when a dispute arises among individuals or a civil regulate state an appeal is made to a court of law, that is to demand justice of the state:

The court decides, the losing party acquiesces; or if he does not, the Power of the State forces him to submission:

and thus the effects of contention are suppressed, and Peace maintained:

The People of any country will have confidence in, and pay obedience to
a government, in proportion to the goodness or badness of its administration; of
which the business of the courts forms the most important part:
The administration of justice is the most powerful, most universal, and most attractive
source of obedience, obedience, and attachment:
The courts, which are the immediate and visible guardians of life, liberty, and property,
having the benefits and its terrors, constantly before the public eye, regulating all their
personal interests and familiar concerns, in which the sensibility of individuals is more immedi-
ately awake, contributes more than any other circumstance to the inspiring or the
minds of the People; affection, esteem, and reverence towards the government:
This ought to make it particular, the duty of the convention so to constitute the courts as to
obtain for our government that affection, esteem, and reverence.
For it is equally true that if the courts do not cause, these affection for the government,
they will introduce their opposites,
for they constitute so important a part of the government, that they cannot be neutral or
independent on their opinions on the minds of the People:
The having proper courts to decide on the nature, extent, and degree of crimes, and to deter
what finally the law has settled for each, is of the utmost importance to every
individual in the state:
The importance of these things, on which they will have power to decide, would alone
be sufficient to fix our attention to the having of these proper courts, constitutes:
but when we reflect that we may be called on to appear for our lives before them by the hand
of arbitrary power;
by the matter of wicked enemies;
by the effects of a momentary passion;
and sometimes, by the natural consequences of the imperfections of our nature;
we shall be apt to say with a great and good man,
"That nobility of soul, an uprightness of heart; no prudence or circumspect
expression of conduct, should tempt a man to conclude that he may not at some time or
other, be deeply indebted in their being appointed in a proper manner; for
the instability of the best counsels, the vices, and incorrigible passions of others, the insta-
1
bility of all human affairs, are the new bulwarks of the courts which the contents of a day or
may bring forth, will teach us, upon a moment's reflection, that they are matters of consider-
able concern."

The knowledge that has been, or may be acquired, with regard to the best rules that can
be observed, or constituting courts, which are conscious to the destruction of personal and
and these concerning property, is more interesting to mankind than any or all
the other parts of government.
If a constitution is defective in any other Part, it may be amended before any bad Consequences shall take place.

But if your Courts are not properly established, the Life, Liberty and Property of every Citizen will be continually in danger.

All these Considerations make it peculiarly our Duty to consider,

1st. How these Courts, which are so absolutely necessary, and so essentially important, ought to be constituted and organized?

Our attention is here naturally divided between,

2. The Courts Themselves— and the Judges who are to preside upon those Courts:

3st. As to the Courts Themselves:

They should be sufficiently numerous, and their Sittings sufficiently frequent, to carry Justice as far as practicable, to every Man's Door:

and to establish a speedy, uniform and equal administration of justice throughout the State:

If they fail in any one of these Particulars, they so far fall short of answering all the good Purposes which they might and ought to Promote.

A steady administration of justice has the happiest effects on the

and Prosperity of the Country where it exists:

Nothing tends more to make men honest and punctual in their engagements than a court of Equity, that if they behave differently, the Laws will certainly and speedily prevent it, for their misdemeanor:

it is the hope of impunity either total, or for a great length of time which alone can induce men to transgress:

It will have the happiest effect on the Prosperity of the Country, as it will oblige all men to live within their Income:

and as it will be a means of establishing Credit within the State:

Credit is necessary, and will be given in all Countries;

The only Difference is, that in some Countries it is given on better and more moderate terms, than in other Countries:

Whenever it is given, it is either by way of sale or loan:

The Price in Case of Sale, and Interest on a Loan, will be fixed in a Compromise which springs out of the convenience, and the hazard, the Lender or the Seller subjects himself to:
As the speedy administration of justice is both the convenience and the hazard, it will go a great way towards restoring the credit, so as to cause it to be given on the most moderate terms profitable:

This country is happily in a situation at this time... to enable us to fix and carry into execution such regulations.

When the generality of the people on a county are much involved in debt, it must have been caused by the want of such an administration of justice.

To attempt a total change in such a situation would be hazardous

From the great number of debtors, and the amount of their debts, it would cause a total revolu-

Tion of Property:

And from the great quantity of property which would be brought to sale at once, the creditors would get it at their own price.

Thus the debtors being stripped of their property, and not discharged of their debts, would become desperate, and might throw the country into convulsions.

But how the bills of the people being clear of debt, any may safely sit out on that plan.

And dividing as will keep them clear:

amounts of

District Court, not for the debt; some county Courts in Virginia;

As to the number of courts, that will depend on, and should be varied with the circumstances of the country:

always having them sufficiently numerous to answer all the great Purposes of them in a situation.

But it is indispensably necessary to a due and proper administration of justice, that there should be one supreme tribunal before which cases may be brought by way of appeal from all the other courts:

This is necessary by a great variety of considerations:

1st One of the Perfections of civil government, is the having one law of the

land in every part of the State:

this can only be the case, where you have an uniformity of decisions in your courts:

and that uniformity can be obtained only by having one supreme court to whose decisions the rest are obliged to conform:
When this is not the case, you may have as many contradictory decisions as you have courts;
and the determination of each will be formal and conclusive;
who will be able to say then which of these decisions is law, and which is not?
This will not only produce the greatest confusion, but also the greatest injustice:
The same man may be Plaintiff and Defendant in different courts on the same point as well as in both.
But when you have one supreme Court, with appellate jurisdiction, its decisions will be uniform and consistent:
and the inferior courts being obliged to conform to its decisions, there will be one law throughout the land.

2. Such a court is necessary to prevent disputes among other courts about jurisdiction:
when courts are independent of each other, questions will arise between them, concerning the extent and boundaries of their respective jurisdictions:
each will be desirous of enlarging its own authority:
asuperior tribunal, which both acknowledge, can alone adjust the controversy.
Such a power therefore must reside somewhere, lest the rights and peace of the country be disturbed, by the endless opposition and mutual incroachments of its own courts of justice.

3. It is necessary to prevent injustice, and to remove a false suspicion, if it be done:
The human mind is so framed, that the slightest circumstance may prevent the most upright tribunal from giving complete satisfaction:
and this may happen in a variety of cases where the distrust and suspicions may not be altogether destitute of a just foundation.
The appeal to a second tribunal, will remove the unjust suspicions, confirm the words passed, and remove the injustice which it causes.

4. It is necessary to correct the unintentional errors of the court which first decides an important case:
Human judgment is very prone to fail, and
truth is great, and always overpowers when a fair and sufficient investigation is made.
The affair is reviewed,
and by a more different body it is reviewed by,
and the greater the probability of its being finally determined right;

The courts with a great degree of knowledge, and without any bias intend may often be
lost into errors;

They are often taken by surprise,
always called only decide in a short time on arguments which have been prepared with

great labour,

here...matters stated by very unequal abilities;

the curate's trust, and the opposite counsel confounded by a principle on a case, or an argu-

ment, which further reflection, and leisure would enable them to answer;

from some of these causes the ablest judges have been mistaken, and have had condemn-

enough to acknowledge it.

Having a court of appeals enables the party injured by this error to have rectified

out of time or more, notwithstanding the error is detected the injustice which it causes will

be without a remedy;

and thus the court would in that instance, not only fail of assuring the respondent for which

it was established, but would itself become a new means of injustice:

and the inferior court from whose judgment the appeal was made, the juris-

dy on its attorney or whose favour judgment was given, in the inferior court

would be such a check on the superior court as would keep it in proper

bounds.

Abhorrence for her own opinion, and a just regard to her reputation for integrity and

knowledge,

would make the judge of the inferior court, over the conduct of the Supreme

Court with jealous eyes:

what escaped him that was exceptionable in the business, would be sure to be observed

by the interested, and well informed eye of the party and his attorney.

The supreme court would always know that they were thus doubly watched,

and would endeavor so to act so as that their judgment would bear the strictest scrutiny;

and when we add to these that all Parties in consequence of the arguments which were

been used in the inferior court must go better prepared before the supreme Court;

we may safely conclude that there would be every reason to suppose that justice would be done.
by that Court is the Porter:

These truths are so well established, that every free civilized country that we know in the world, has a Court of Appeals:

Every State in America has one—England除外

But supreme is objected;

Answer.

It is an expense that is absolutely necessary, and therefore must be borne.

This, and every other expense of government may be paid without distressing or oppressing any citizens of the State:

and the whole expense of the court may be defrayed by a judicious tax on land, provisions, &c.,

and then if justice is done by the courts,

and the Person cost Pays the costs.

These expenses will be borne altogether by those whose misconduct and improper conduct, makes courts necessary.

To. As to the Judges who are to preside in those courts,

Consider

1. The mode of their appointment:

2. The time that they are to hold their offices;

3. Their salaries; and

4. Their responsibility.

As to the mode of their appointment:

Here I shall refer to the reasoning used as to the choice of the Governor to show it ought, not to be in the Legislature:

for they all apply with equal force against their having the appointment of the Judges.

If it cannot be placed in them, it must be placed in the Governor:

he is most likely to select the men possess of the necessary degree of virtue, wisdom, and legal knowledge.

after the appointment, they will be even dependant of him, as they will hold their offices during good behavior.

If they were to have a Partiality for any, it ought to be for the executive, as the weakest branch;

But their elections were to be kept nearly balance between the two:

for if they have their appointment from the Governor, they have their pay fixed by the legislature.
2. The time that they are to hold their offices:

This ought to be during good behavior;

nothing else will give them independance enough to enable them to discharge their duty

to oppose the inroadsmong of the other branches of the government.

To be deaf to the threats or promises of the rich and powerful, and to enable them to con-

duct without fear equal justice to the poor and oppressed.

3. Their salaries:

1st. They should be fixed and established so that the legislature cannot secure them

of the Judge offers them by doing their duty:

--- arguments to Governor's salary.

2nd. They should be competite, the not extravagant:

They should be sufficient to give their families a decent and comfortable support:

To enable them to devote their whole time to qualifying themselves for, and to the actual

discharge of their duties;

To screen the integrity from the temptation of temptations.

and their characters from the suspicion of taking them;

To preserve their independency from that contempt, which too often, the unjustly is atter-

dered to Poverty:

and to make their seats, objects of ambition with men of eminence in their Proffes-

sion;

This of more importance than is generally supposed:

Courts will never be truly respectable, nor fully answer the purpose of a just and care-

ful administration of Justice;

until the Judges are superior in legal knowledge to the bar;

This cannot be the case until it is an object with the best Criminals to be judges;

cannot get at first those who are in full practice;

but when the ardour of youth is abated --- and competency acquired --- even

they will want rest.

If then, the salary of a Judge will support them, and enable them to keep enter what

they have got,

They will look up to it as a resting place.
If not they must continue to labour for fear of defeating the ends of their early labour.

When we consider the importance of this trust to all, the many ways by which every one may be injured by the improper discharge of these trusts; we shall readily see, that all are interested in giving them such salaries as will be sufficient to gain the greatest probability of getting the best men.

A person who has been or thought of, will more than the Judge, be worth ing; and from will not do.

Suppose the question was whether they should have 200 or 300 a year each? This would make a difference of 600 a year to the State. Divide this sum between 70,000 souls, it gives about 2d a head; divide the same between 15,000,000 of acres, it gives 12d a farthing.

I reason from the first not because I would wish to see this, or any other tax raised on the head, but to see what the proportion of each would be:

and I reason the second, because as I hope to see government supported by a land tax, it shows what the difference between the two sums would take from the land, the 12d of a farthing:

The difference between the two sums is all that ought to be calculated on:

because all agree that we must have Judges, and that they must be paid:

only dispute is about the difference of the amount of the salary:

A citizen who has a practical cause of importance will give a lawyer $12:

If that lawyer takes great pains, and is at great labour in stating his case, the court the citizen generally thinks it is not too much,

but after he has paid this expense, his cause still depends on the judge:

if he is not a man of skill in his profession, he will not understand the principles laid down, and the deductions drawn from those principles by his attorney:

and he may lose his suit for that reason:

If he is, as he ought to be, superior in legal knowledge, to the attorney, he will discover and apply any principle which operates in his favor, the attorney then has passed them over unnoticed:

Thus either way it is much more important to each seer, to have an able Judge, than an able attorney:

and must consequently be more to his interest to pay to government 2d a year, more to get such a judge, and by that means ensure to himself a proper decision, if he should go to law:
Then pay $10 when he does go to law, to an attorney;
and own the risk of losing both $10, and the object in contest, from the want of a sufficient knowledge on the judge;
which was caused by her refusing to give $2, a year to induce a proper man to come into office;
Add to this, the danger to life, and liberty, from the want of proper judges;
This reason, by no means goes to prove that it is proper or necessary to give excessive salaries:
for giving what is proper and right will have all the good effects which they cannot more than that would produce:

If this is their responsibility:
This will be secured:
1. By giving the U. of R. power to impeach them for misconduct:
2. By giving the Governor power to remove them on the address of 2/3 of each branch of the Legislature:
The first will open a door to their removal on any misconduct or malpractices;
and will prevent their continuing in office, after they become unable from age, infirmity, or accident, to discharge the duties of the office:
The experience of the wisest nations, and the concurrent testimony of all these, almost univerally confirm their opinion:
Particularly observe how courts and judges are fixed in conformity to their ideas:
I have already had occasion to explain the inequality and injustice which prevails in that government:
and yet the people of that country, out of 1/10th of them are deprived of the undoubted privileges of freedom, are contented and happy:
This can only be accounted for in this way:
That although their form of government deprives them of many political privileges, which they ought to enjoy as citizens, yet it has established their courts on such principles, that every man in the nation feels himself perfectly secure in the enjoyment of his life, liberty, and property:
If their courts so constituted, command a people contented and happy:
who are deprived of many Privileges of free citizens,
what may we not expect from a government,
which to a perfect equality of rights and privileges, amongst her free citizens, shall add courts with a similar constitution:

De Launay.

"Judges placed in this situation, have in England created such an impartiality in the administration of public justice, have introduced into the courts of law, the practice of such a thorough disregard of either the influence, or the wealth of the contending parties, and procured to every individual, both rich and poor, an easy access to the courts and such a certainty of redress in them, as are not to be found or practised in any other government. Indeed to such a degree of impartiality has the administration of Public Justice been carried, that any violation of the laws, the perpetration by one of the most extensive influence, will be publicly and uncompromisingly repressed; and the very least of subjects will obtain such redress, if he has but spirit enough to stand forth and appeal to the laws of his country:

Most extraordinary circumstances these, which those who know the difficulty that there is, in establishing just laws among mankind, and in providing a watch for their due execution, only find credible because they are matters of fact.

But I seek Pardon for appealing on this subject

to the experience of former ages;

to that of the present age both in Europe and America;

and to the wisdom of the most enlightened men in every age and country.

I had forgotten,

That wise men,

for instance in wisdom to all these, who have either gone before them, or one after them, in this or any other country.

have discovered that our laws,

are two necessities for a free country; and

that if we wish to become really free,

that the laws by which we are governed,

must be few in number; and

simple in their nature.

To understand this subject, we must consider.

1. What law is?
2. How it is favourable or prejudicial to liberty in its operations; and
3. What are the kinds and number of laws now in force here:

1st What is law?

Laws are of different kinds, but that which we are now considering, is called municipal law:

That is by an able writer defined to be,

A rule of civil conduct prescribed by the supreme Power of a state, commanding what is right, and prohibiting what is wrong:

From this definition of law, it is evident, that it cannot depend upon the will of the judge,

must be prescribed by the supreme Power, and conform to by them;

As it is to command what is right, and prohibit what is wrong.

It follows, that it ought to protect every right, and prohibit every wrong.

Therefore no law can be unnecessary or superfluous, which properly protects a right

Prohibits a wrong:

and whenever there is a right which is not protected, or a wrong which is not prohibited,

Then is there one law too few:

2nd Are the operations of law favourable or prejudicial to liberty?

Blackstone,

"Law is a science which distinguishes the criterion of right and wrong; which teaches to establish the one, and prevent, punish, or undo the other; which employs in its theory the noblest faculties of the soul, and operates in its practice the cardinal virtues of the heart; a science which is universal in its use, and certain, accommodated to each individual, yet comprehending the whole community."

There can be no freedom, were there was not written certain and fixed laws; law must take place of will, were there was no regulation, there can be no freedom:

That government is a miserable servitude, whether you call it a republic, or a despotic form, where the law is uncertain and unknown; and it is only under the security of certain and known laws, that a country can become prosperous and happy:

Montesquieu,

"Political liberty does not consist in an uncontrolled freedom. In government
"That is in societies, liberty can consist only in the power of doing what we both wish to will; and so not being constrained to do what we ought not to will. We must have externally, before ourselves, the difference between independence and liberty. Liberty is the right of doing whatever the laws permit, and if a citizen could do what the laws forbid, he would no longer be possessed of liberty, because all his fellow-citizens would have the same power. Action tried in a state, where the laws for fixing and inflicting punishments are more freely regulated, although he be condemned to be hanged the next day, would have much more liberty than a Portuguese enjoys in Portugal."

Paley.

"In every kind and degree of communication with his species, the liberty of the individual is augmented by the very laws which restrain it; because he gains more from the limitation of other men's freedom than he suffers by the diminution of his own."

De Lolme.

"Liberty is best secured when every man while he respects the Persons of others and allows them equally to enjoy the produce of their industry, be certain likewise to enjoy the produce of his industry; and that his Person be also secure."

To live in a state where the laws are equal for all, and sure to be executed, is to be free." Federalist.

"A voluminous code of laws is one of the inconveniences, necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the events, it is indispensably that they should be bound down by strict rules and Precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived that from the variety of the controversies, which grow out of the folly and wickedness of mankind, that the records of these Precedents must unavoidably swell to very considerable bulk."

Malesguin.

"The principles of democratic government is fear, and a timid, ignorant, and faint-spirited People, have no occasion for a great number of laws."
In this kind of government authority must ever be warning; nor is that of the law
est magistrate less steady, than that of the Despotic Prince. Under moderate gov-
ernments, the law is present in all its parts, is perfectly well known, and even the Pote-
test magistrates are capable of following it. But in a despotic State, when the
Prince's will is the law, though the Prince were wise, yet how could the magistrate
follow a will he does not know? He must certainly follow his own.

Moreover, as the law is only the Prince's will, and as the Prince can only will what
he knows. It follows that there are an infinite number of People, he must will for them,
and as he wills. In fine as the law is the momentary will of the Prince, it is necessary
that those who will for him, should follow his sudden manner of willing.

Monarchies do not admit of such a simplicity of laws, as Despotic government.
For in monarchies there must be courts of Indictments, there must give
their decisions; the decisions must be preserved and known, that we may judge on the
same manner to day as yesterday, and that the lives and Property of the citizen may be
certain and fixed, as the very constitution of the State.

In monarchies, the administration of justice which decides not only on what proceeds
in life and Property, but likewise to honor, demands very careful proceedings. The
delicacy of the Judge increases in proportion to the increase of his trust, and the im-
portance of the interests on which he determines.

He must and therefore be surprised to find so many rules, restrictions, and extension
in the laws of those countries; rules that multiply the particular cases, and seem to
make an art of reason itself.

In Turkey, where little regard is shown to the honor, lives, or estate of the subjects,
all causes are one way or other quickly decided. The method of determining them
is a matter of indifference, provided they be determined. The Baasha after a quick
hearing, orders in which he Party he pleases. to be transported, and then sensation about
their business.

But in moderate governments, where the life of the nearest subject is esteemed pre-
cious, no man is stripped of his honor or Property, but after a long enquiry; and no
man is burst of life until he is very closely has attacked him, an attack which is
never made without leaving him all possible means of making his defence.

Hence it is that when a Person considers himself absolute, he immediately thinks of

In a government thus constituted, they are more offensive with particular inconveniences, than with the liberty of the subject which is very little minded.

In republics it appears that, as many formalities are necessary as in monarchies. In both governments they are a means proportionate to the value which is set on the laws, honor, fortune, and liberty of the subject.

The nearer a government approaches to a Republic, the more the manner of judging becomes settled and fixed by law, the more numerous must those laws be. Judgments ought to be fixed to such a degree as to be always conformable to the strict rules of the law. Were these to be the private opinion of the Judge, People would then view society without knowing exactly the obligations it lay them under.

Great part of the contest between the Patricians and the Plebeians, proceeded from the latter existing upon having fixed laws, to the end that the public judgments should no longer be the effect of a capricious will, or of an arbitrary Power. The result was often great deal of resistance, acqquted, and the laws of the commonalty formed.

Mankind must be governed by some means or other:

either by written laws, or by will;

when it is altogether by will, and no written laws.

The government is entirely despotic;

where it is partly by written laws, and partly by will, substituted to written laws, because they are not sufficient by themselves,

is as despotic in all these cases determined by will, which are not provided for by written laws,

as it is in all cases where there are no written laws at all, and will alone decides.

From all these means we may conclude

that law not only is not prejudicial to liberty, but is essentially necessary to its existence and preservation;

as well provided no useless laws are passed

the more numerous the laws are in a country, the greater is the degree of liberty.
enjoyed in that country:

The same objection have been made to numerous laws before these; and the people have thought of making them few and simple; but it has always been found impracticable to do it, and for some liberty at the same time.

The only attempt of the kind that has been made for a great length of time ever was by Frederick of Baffin; whether he was a good republic, we all know. He published a small volume of laws as being sufficient for his subjects. This might answer then because as only he will alone dictate these laws, their defects and deficiencies might be supplied by the same means.

But very little understanding is necessary to know that such a measure will not answer here, until a committee man shall become king, and then his will will supply the place of all laws.

This brings us to consider,

3. What is the kind and number of the laws in force here at this time?

By an ordinance of Conventions passed in 1776, the acts of Parliament passed prior to the 1st of James I. The acts of Assembly; and the ordinances of the Convention of Virginia; and the Common Law of England, were declared to be the law of the land.

By an act of Assembly passed in 1789, the statutes of England were declared no longer to have any force here.

Therefore at this day the Acts of Assembly, the Ordinances of Convention, and the Common Law of England constitute the law of the land.

If they are not the laws of Virginia, they will also be the laws of Kentucky, subject to be altered at the will of the legislature.

As to the Acts of Assembly, the ordinance alone will,

where any of them, whether any of them are unnecessary, and entitles repeal them:

when there are several on the same subject reduce them to one, and

when new ones are wanting enact them.

There as to the Acts of Assembly and Ordinances of Convention, we may safely adopt them.

As to the Common Law:

It is common from its being the law of the whole land, to contradict itself from customs
which orders to particular Places;
and also to distinguish it from the Statutes or Acts of Parliament, now in existence.

For although the Common Law is supposed to have originated from acts of Parliament, which are now lost,
yet it cannot depend upon any such existence, for if any such act could be found it would then be classed with the statute, and not the Common Law.

To understand this subject, it must be remembered, that the Common Law, and the Statute Law cannot be the same, except in the single instance of a statute's being passed in accordance with the Common Law, which is seldom the case.
They being generally passed to change the Common Law:

- Magna Charta is an instance of the first;
- Our Act of Assembly about Discreet; of the second.

It should also be known that most of the things provided for in law, have this provision made by the Common Law, and not by our Acts of Assembly:

Our Common Law depends,

Notwithstanding our Act concerning Discreet, most of the rules concerning inheritance,
- The manner and form of acquiring and transferring Property;
- The solemnities, obligations of contracts;
- The rules of interpreting wills, deeds, and Acts of Parliament;
- The succession remedies of civil injuries;
- The several species of offenses, with the manner and species of punishment,
That property may be acquired and transferred by writing;
That a deed is of no validity unless sealed and delivered;
That wills shall be construed more favourably, and deeds more strictly;
That breaking the Public Peace is an offense, and punishable by fine and imprisonment.
There are an infinite number of matters particular, which diffuse themselves as extensively as the ordinary distributions of common justice requires, are not set down in any written act or ordinance, but depend merely upon the Common Law for their support.

What this Common Law is, and what it does in every case, is to be known by consulting the records of the Courts of Justice, books of reports, and judicial decisions.
and treatises of learned men of the profession preserved and handed down to us from the times of the highest antiquity.

From this it follows that if we do not adopt the Common Law of England as Virginia did, that we must either:

1. Leave all the cases now provided for by the Common Law (which make 2/3 of those that can come before a court of justice) unprotected;

and thus make the Courts arbitrary in fact, or:

2. We must pass new acts taking in all the subjects now settled by the Common Law;

The same will be found little less detrimental when we come to understand its consequences:

1st. If we do not adopt the Common Law upon a supposition that the legislature will pass acts to take in the cases provided for by it,

a great length of time must necessarily elapse, from the length, difficulty and importance of the work before it could be completed;

and for that time we should certainly be so far without law.

2d. If we could do it immediately, it would be attended with great detriment to the Public:

The Common Law is founded on old statutes; and in the absence of those statutes, as explained and refined by the wisdom of a series of Judges;

if then we could pass and have ready new acts on all these subjects, we should, begin where England did several centuries ago, when these statutes were first passed, instead of amusing ourselves with the wisdom and experience of our courts, which we only do by adopting the Common Law as it now stands.

For what should this be done?

That we may look into new books instead of old ones to know what the law is:

That all new laws, the former with the greatest technical skill, are based on the fullest and most mature deliberation, are more or less obscure, equivocal until their meanings be liquidated and ascertained by a series of particular decisions and adjudications.

All these doubts and difficulties are removed by the Common Law, adopt it and we are clear of them forever.
The new acts, and we have them all to encounter:

In England they have been obliged to pass 32 acts of Parliament before they could place one subject beyond doubt.

Lavoisier — What is proposed would require hundreds of new acts, and these would all have the same tendency, the root on so great a degree:

Most of the real objections to the laws either of England or Virginia arise from particular acts of Parliament, or of our Assemblies, and not from the common law. Blackstone.

"The common law is the perfection of reason: it always intends to conform itself to, and what is not reason, is not law: it is built upon the soundest foundations, and has been approved by the experience of ages: the mischiefs that have arisen to the people from unconsiderate alterations of it, are too obvious to be called in question. The common law of England has lasted like other venerable edifices of antiquity, which rash and unexperienced workmen have ventured to new ways and refines with all the rage of modern improvements. Hence frequently it's symmetry has been destroyed, its proportion distorted, and its majestic simplicity exchanged for species of embellishments and fantastic novelties. To say the truth, almost all the improved questions, almost all the niceties, intricacies, and delays, which have sometimes degraded the English as well as other courts, are their original in the common law itself, but to innovations that have been made in it by acts of Parliament. That great and experienced judge (Sir Edward Coke) declares that we all know, he never knew two questions made upon right merelydepending upon the common law, and unwarily laments the confusion introduced by ill judging and unskilled legislators."
The Plan of the revised was this: The Common law of England, by which is meant that part of the English law, which was anterior to the date of the oldest statutes, or made the basis of the works. It was thought dangerous to attempt to reduce it to a treat; it was therefore left to be collected from the several monuments of it. Necessary abridgments on that, and so much of the whole body of the British statutes, and Acts of Assembly as were thought proper to be retained were digested into new Acts.

The benefit of this work is now have; as we may also at a future day of a similar work now on hands in Virginia.

This whole subject is taken up and ally treated 3d Blackstone Commentaries from 325 to 330: 442 to 444.

The uncertainty of legal proceedings is a notion so generally adopted, and has so long been the standing theme of wit and good humor, that he who should attempt to refute it would be looked upon as a man, who was either incapable of discernment himself, or else meant to impose upon others. Yet it may not be wonders, before an exertion upon the mode whereby certainty is meant to be obtained in our courts of justice.

To acquire a little wherein the uncertainty so frequently complained of consists, and to what cause it owes its original.

That sometimes been said to own its original, in the number of our municipal constitutions; and the multitude of our judicial decisions; which occasion, it is alleged, aboundance of rules, that mislead, and thwart with each other, so the sentiments of present of successive legislatures and judges have happened to vary. The fact of multiplicity is allowed; and that there, the researches of the student are rendered more difficult and laborious, but that doubt and uncertainty, is a consequence of that cannot be admitted. People are apt to be angry at the want of simplicity in our laws; they mistake variety for confusion, and complicated cases for contradictory. They bring in the examples of arbitrary governments, of Denmark, Muscovy and Poland, of wild and uncultivated nations, the savages of Africa and America; or of numerous domestic republics, in ancient Greece and modern Switzerland; and unreasonably require the same council of laws, the same concurrence of practice, in a nation of freemen, a保利 and commercial People, and a Populous extent of territory.

The cause of the multiplicity of the English Laws, are the extent of the univers.
by which they govern: the commerce and refinement of its inhabitants; but above all, the liberty, and Property of the subject. These will naturally produce an infinite variety of disputes, which must be determined in a judicial way; and it is essential to a free People, that these determinations be published and adhere to; that their Property may be as certain and fixed as the very constitution of their state. For in many other countries everything is left in the power of the judge to determine, and it is his duty only to declare and pronounce, not to make or even model the law. Hence a multitude of decisions or cases adjudged, will arise, for seldom will it happen that any one rule will exactly suit with many cases.

And in proportion as the decisions of courts of judicature are multiplied, the law will be loaded with disputes, that may sometimes (the rarely) interfere with each other; either because succeeding judges may not be apprized of the prior adjudication; or because they may think differently from their predecessors; or because the same arguments did not occur formerly, as at present; or in fine, because of the natural fallibility and impurity that attends all human proceedings. But whenever this happens to be the case, in any material point — the legislature is ready, and from time to time both may, and frequently does, determine to remove the doubt; and upon due deliberation has, determines by a declaratory statute, how the law shall be held for the future.

"But is not (it will be asked) the multitude of law rules, which are daily seen and experienced, an argument against the clearness and certainty of the law itself? By no means: for among the various disputes and controversies, which are daily to be met in the course of legal proceedings, it is obvious to observe how very few arise from obscurity in the rules or maxims of the law. An action shall seldom be heard of, to determine a question of inheritance, unless of the fact of the descent be controverted. But the dubious points, which are usually agitated in our courts, arise chiefly from the difficulty there is of ascertaining the intentions of individuals, in their solemn dispositions of property; in their contracts, conveyances, and testaments. It is an object indeed of the utmost importance in this free and commercial country, to lay as few obstacles as possible upon the transfer of property from hand to hand, in their various dispositions marked out by the prudence, convenience, or necessities, or even by the caprice of their owners: yet to invest the intentions of the owner.
to frequently makes of difficulty among heads of interdict cases, as well as of various obscurity. The law rarely has the duty of declaring its own meaning; but the judge are frequently puzzled to find out the meaning of others. Thus the Parson, the entender, the Undersigned, the Proponent, of a tenant for life, and tenant in tail, are already distinguished, as are precisely settled by law; but what words in a will shall constitute this or that estate, has occasionally been disputed for more than two centuries past, and will continue to be disputed as long as the carelessness, the ignorance, or singularity of testators, shall continue to cloud their intentions in words and near-fangled expressions.

"But notwithstanding so vast an accession of legal controversies, arising from a fault so found as the ignorance and willfulness of individuals, there will bear no comparison in point of number to those which are founded upon the dishonesty and degrading inferiority of the Parties; by either their suggesting complaints that are false in fact, and therefore bringing groundless actions; or by their denying such facts as are true, in setting up unwarrantable defences. For facts written true: if therefore the facts are represented, or misrepresented, that from which arises from hence, the law which arises from thence will unavoidably be unjust or partial. And in order to prevent this, it is necessary to set right the fact, and establish the truth contended for, by appealing to some mode of procedure or trial, which the law of the country has ordained for a trier of truth and falsehood.

"These modes of procedure or trial from in every civilized country, the great object of judicial decisions. And experience will abundantly show that above a hundred of our laws suit arise from disputed facts, for one where the law is doubted of.

"This care and circumvention in the law, in providing that no man's right shall be affected, by any other law proceeding without giving him previous notice, and yet that the debtor shall not, by receiving such notice, take occasion to escape from justice; in requiring that every complaint be accurately and precisely ascertained in writing; and be as pointedly and exactly answered; in clearly stating the question either of law or of fact; in deliberately resolving the former, after full argumentative discussion, and undisputably fixing the latter; by a diligent and impartial trial; in correcting such errors as may have arisen in either of these modes of decision, from accident.
mistake or reprieve; and in finally enforcing the judgment, when nothing can be
alleged to impeach it; this ensues to maintain one section to every individual
the enjoyment of his civil rights, without infringing upon those of any other individual, on the nation, this Parental solicitude, which pervades our whole legal constitu-
tion, is the genuine offspring of that spirit of equal liberty which is the regular felicity of Englishmen. At the same time it must be owned, where given a hand-
ful, in some degree, to those complaints of delay, in the Practice of the law, which are not wholly without foundation, but are greatly exaggerated beyond the truth.

Yet some delays there certainly are, and must unavoidably be, in the conduct
of a suit, however deserving the Parties, and their agents may be, to come to a speedy determination. These arise from the same original causes, as were mentioned in a former complaint, from liberty, property, civility, commerce, and an
extent of populous territory; which whenever we are willing to exchange for to-
portunity, barbarism, idleness, and a baron desert, we may then enjoy the same
dispatch of causes, that is so highly extolled in some other countries. But com-
mon sense, and a little experience will convince us, that more time and care,
unpretending we require in causes, where the suits have valuable and per-
sonal rights to be ascertained, than where the Property is trivial and precarious, and
what the law gives them to-day, may be seized by their Peace to-morrow.

In Turkey, Boys Montagu, where little regard is shewn, to the limits of fortunes of
the subject, all causes are quickly decided: The bashaw on a summary hearing
orders which Party he pleases to be bastinadoed, and then sends them about their
business. But in free states, the trouble, expense, and delays of judicial
proceedings, are the price that our subject pays for his liberty; and in all gov-
ernments, he adds, the form of these of law increase, in proportion to the values
that is set on the honor, the fortune, the liberty, and the life of the subject.

3. How far ought the constitution to direct as to the courts and the

Judge?

Different countries, may the same country, under alterations of its Population,
enlargements, or will require different regulations on the subject;
more Particularly must this be the case here;

pointing out any particular mode now, would probably make it very inconvenient.
some years hence;

Virginia — District Court laws:

All that is proper will be attended to such fundamental principles as will be equally proper in all situations.

Such as,

That there shall be a Supreme Court, and as many inferior ones as the legislature shall from time to time, think proper;

The mode by which the judge shall be appointed;

That they shall hold their offices during good behaviour; be liable to removal for misconduct; and removed on the joint application of 3/4 of both houses:

That they shall have adequate salaries, which shall not be diminished during their continuance in office;

That the courts shall at all times be open to the citizens, and the law be duly administered therein, freely without sale, fully without any denial, and speedily without delay; and according to the law of the land:

14. What particular regulations are made necessary by the peculiar situation and condition of the country:

The land laws of Virginia have been so framed as to lay the foundation of an infinite number of disputes:

These disputes are of such a nature as to renders a decision of them an unanswerable, impracticable, in a moderate time, or at such an expense as will not be reasonable to this; and the present regulations of the courts are such, as prevent proper and effectual steps being taken to pursue justice to the parties, even at a remote period, and after the most serious expenses have been incurred:

14. What particular regulations are made necessary by the peculiar situation and condition of the country:

14. What particular regulations are made necessary by the peculiar situation and condition of the country:

Gross part of the claims depend on helping marks, improvements and names, and the persons who are to do it are far advanced in life:

This single circumstance, unless some step is taken, or to bring these disputes to a speedy issue, will cause the greatest injustice:

2. As the law now stands a man who has the eldest patent, and is the possession of the land can never force another claimant to the same land to try his title until he pleases:
This causes the greatest uncertainty in the minds of those so situated; Prevents their engaging the lands themselves, or selling to those who would do it: Prevents emigration, as scarcely any purchaser can be secure unto his title, or his purchase, from whom he will; and endows many persons to keep back their claims until the death of unbearably slow living.

34. The only remedy that a person so situated has is to bring a suit to pervertate his testimony: This puts him to all the expense which would be necessary on a suit to try the title, and after all makes no determination either way.

To make it effectual, even to procure his testimony, he must bring as many suits as there are different claims to the same land; because no person is bound by testimony taken in a suit to which he is not a party, and because you cannot unite persons claiming under different titles in the same suit.

Where infants or married women are concerned, even an agreement will not prevent the necessity of this multiplicity of suits.

44. Where there is no such obstacle to the bringing of the suit, he must bring as many suits as there are claims on persons in possession, or otherwise he may lose after having got judgment against different claimants.

A: has an entry and patent which enforces with ten claims: his right depends on proving his beginning, which he cannot do but by living testimony: he brings ejectments against 9, and recovers judgment, his witness thunders, and the tenth man suits him and recovers all the land; because he was not a party to any of the nine suits, what that witness said in the trial of those cannot be given in evidence against him, as he had not an opportunity of cross-examining him.

34. Where different patents have issued for the same land, there are frequently three suits, and generally two, to settle a title that might as well be tried by one:

That is, A: and B: both certificates for settlements and pretensions, A: a village right, B: an actual settlement:
They are located so as to clash;
before survey they agree on a dividing line;
A. survey's agreeable to the agreement: and gets the oldest Patent;
B. excludes the land he agreed A. should have and gets possession;
to try this title there must be an agreement, and two suits on chancery: ten years
sufficient.  (Sec 13. 13. 92. 113. End)

Two.
The person having the oldest Patent brings a suit against
Always necessary when the person having the equitable right is the youngest Patent, and the Possession of the cause.

6. Most rights being now determined in chancery, the courts are influenced by depositions, instead of sworn oral testimony;
Those who are acquainted with the business, know how prejudicial this is to the discovery of truth;
and in taking depositions; lose advantage of confronting the witnesses; their
countenances, manner etc.

A third or half would receive different decisions if examined in court:
7. From the forms in the Procedure in chancery, a suit is necessarily
kept back, when no uncommon delays and parties all here:
If a proper tribunal was established, under the same circumstances, it might be disposed of in 30 days:

8. As the laws now stand, an equitable claim will not be barred under
twenty years at the least. Perhaps not under 50:
When it is remembered that a person having the legal title, and also being in possession cannot force the man, having the equitable title, and no possession, to try his title; the
consequence of this may easily be foreseen:

9. The experience of what has happened, gives us every reason to think that in the present mode the disputes never can be settled:
Here have been 400 suits in chancery brought about land in the
District Court,
14
have abated by the death of some of the parties, 18
40
have been dismissed agreed, 135
27
have had judgment given on them, and 70
3 14
are still depending there: 17 1 45 80
This without the court or attorney being to blame.

The situation of the country — witnesses: — Parties: —

But chiefly the forms of the court: — and thus defect of power in errors, the proper means to expeditate the:

10th. As the laws are now in the Federal and State courts, a man may be Plaintiff in one and Defendant in the other, on the same question, and be finally cast in both.

Of all situations in which a people can be placed, this is the most unjustly and disagreeable:

All this might be remedied by directing, that the Court of Appeals should have original and final jurisdiction as to cases decided;

and that they should have sufficient power to bring every question before them in the way that would be most expedite, and most likely to do justice to the parties:

Objections to the Plan:

1. It will deprive the parties of the benefit of having their cause decided in two courts.

Answer,

The objection is strong but ought to be got over, as the welfare of the country so absolutely depends on a speedy and cheap decision of land disputes:

That the same thing was done in Virginia, by land law, — and in the general government, where the court of appeals has both original and final jurisdiction, in many important cases:

That their power may be more safely given in their case, than any other.

Because most of the principles of the land law having been already decision and debated in one court;

They would still have the decisions of two courts on them, if the court of appeals was now to have both original and final jurisdiction as to land disputes:

and this means they would have that full discussion which arises from two courts in general:

and that uniformity in their decisions, may be a great measure, visaged by alleging the courts are judge, to enter the state of the case, as the British:

et seq.
on which they gave their judgment:
At the attention of the Parties and the Public, would oblige them to enter the true state of the case;
A regard to their characters would oblige them to give consistent judgments upon similar facts and Principles:
And the same court would determine finally on both Plans, the only difference would be that in the summary mode they would decide in the first instance of the cases instance.
2. Objection;
It would be vesting the courts with too much power to enable them to correct all the abuses I have stated:
So that power could not be abused but from corrupt motives;
and as corruption would be much more effectively exercised in giving the judgments than in directing the means by which the suit should be properly brought before the court if they can safely be trusted with giving the judgments;
and may much more safely be trusted with the other powers:
3. Objection.
That it will be contrary to the compact with Virginia:
That only says,
"That all private rights and interests of land within the said District, derived from the laws of Virginia, prior to such separation, shall remain valid, and the same actions under the laws of the Proprietors State, and shall be determined by the laws now existing in this State."
This evidently means only, as it says, that the right shall be decided on by the Virginia law;
Not that the mode of trying that right should be the same as is directed by the laws of Virginia;
if that was the case, all appeals in these cases must be to their courts of appeals which could never be the meaning of the act.
4. Objection,
The power of the Federal courts:
If they remain on the present footing, it will be a means of preventing all the good that might be derived from the Plan, but it would not destroy it altogether:
Two objects,

1. To prevent unnecessary expense to the citizens;
2. To prevent the evils that will arise to the country from the continuance of the long disputes.

The Plan would be effectual, without the consent of Congress, in all cases when our own citizens only are concerned;

and as the settling the titles, and saving expense in these cases would be a capital object.

But this Plan would probably induce Congress to meet our court of appeals with their authority also:

as it would certainly save the citizens of the other states great part of the expense, they must incur on any other Plan:

and as it would decide their disputes in a much shorter time. I can see no objection they would have to giving the court their authority also;

Provided the judges were neutral Persons, and were placed on such a footing as would meet their confidence:

If these things did not concern it would be inconceivable to expect such a consent.

Congress have the Power to do this, if they have the inclination.

Their supreme court is to have appellate jurisdiction with such exceptions and such regulations as Congress may think right.

This expressly gives them the Power to except land causes from their jurisdiction:

And the clause which says Congress shall have Power to constitute tribunals inferior to the supreme court: the judicial Power shall be vested in such inferior courts as Congress may from time to time ordain and establish:

may fairly be construed to empower them to authorize a state tribunal to take cognizance of disputes between citizens of different States:

Thus if Congress do not come into this Plan, it will be highly beneficial:

but if they do it will be doubly so as it will extend it to all cases of disputed titles:

and will prevent the evils that must naturally follow from final and contradictory decisions which will probably take place on the same questions on the Present Plan.

This a strong additional argument in favour of a court of appeals:

and makes it necessary that the constitution should be worded as to enable the legislature to give them both original and final jurisdiction in cases:

Many other regulations may be adopted which will greatly promote the speedy settlement of land disputes, but as they could not properly be introduced into the constitution...
Sec. 13. 13.

A: Claims two hundred acres of land in Madison on Sugar creek held by B. because A: has a right thereto by virtue of a certificate granted to him by the Commissioners, the day of , and also in consequence of a special agreement made with B, by which a conditional line agreed on between A: and B: to give B: the land now claimed by him; in consequence of which agreement A: surveyed his claim agreeably thereto, and now has the oldest patent for the land in dispute. And A: calls on B: to answer on oath if they did not establish such conditional line as is here set forth; and he prays B: may be obliged to give him immediate possession of the land.

B: Answers that he claims the land now in dispute by a certificate for a settlement and Preemption from the Commissioners bearing date the day of ; that his claim is superior in dignity, and more than the preference to A's, because his certificate was granted to him for an actual settlement; whereas A's is only a village right; and B: expressly denies that any conditional line was agreed on between them as A: sets forth.

And B: prays that A: may be obliged to convey to him the legal title to the land in dispute, A: having obtained it unjustly, as B: has a superior right thereto.
Shall forbear to mention them.
Barnas
Some men. minority rule
If so good let them alone do the business.
Some wicked nicks. sinister commen-
ter.
Ach! a hip - go be beme -
Send from the people.
People whom preach a. will make -
change happen?

Drew
The unequal number of both -
homes - poor he few rich any.
Each one only - 1/3 of men.
Wish in an eligible to be in Freeman -
40 years - diff. kinds of...