SOME NEW BOOKS.

Madison's Writings.

No more important contribution to the materials of American history has ever been made than will be embodied in the work of which the first two volumes are now before us, *The Writings of James Madison*, edited by GAILLARD HUNT (Putnams). The editor's purpose is to set forth all of Madison's public papers and private correspondence which are extant, including numerous letters and documents now for the first time printed. Besides undertaking the task of collecting and classifying a multitude of papers and presenting them in an ungarbled form, Mr. Hunt has prefixed to the first volume an extremely brief but singularly just sketch of the fourth President's life, and he has supplied in the form of footnotes a mass of explanatory comment which represents an immense amount of original research. That this work will prove indispensable to the student of American history will be recognized when we point out that it is the first exhaustive and accurate edition of the writings of a statesman who has preëminent claims to be regarded as the Father of the Constitution. This is an assertion that may possibly be received with surprise in many quarters. There is no doubt that a large proportion of Madison's papers have been given to the world in a more or less authentic form. Thus in 1837 Congress bought for $30,000 from Mrs. Madison her husband's reports of the debates in the Congresses of 1782, 1783 and 1787, his reports of the debates in the Constitutional Convention held at Philadelphia, his account of the proceedings of the Congresses of 1776 and a limited number of letters arranged by himself. These documents were edited by Henry D. Gilpin of Pennsylvania, then Solicitor of the Treasury, and published at Washington in 1840. In 1848 Congress appropriated $25,000 to purchase all of Madison's remaining manuscripts in his widow's hands. In 1856 Congress authorized the printing of the papers acquired by the second purchase, but only a part of them appeared in four volumes published at Washington in 1865. In 1859 selections from Madison's private correspondence from 1812 to 1836 were published by Mr. J. C. McGuire in a limited edition printed exclusively for private distribution.

Not one of these editions is satisfactory, nor, indeed, do all of them combined present even approximately the complete writings of Madison. Many papers of great importance are not included among them, and of those which do appear many are presented as entire which in reality are given only in part, while all have been subjected in the editing to a revisionary process which has impaired the individuality of the writer, and even at times perverted his meaning. Some of the omissions are deliberate suppressions of opinions and facts of the highest historical value. Under the circumstances it is evident that a complete and an exact edition of Madison's writings is needed if we would appreciate the part which he played in American history. About the magnitude of that part there is no dispute. Aside from his connection with the evolution of State government in his native Virginia, and aside, also, from his association with the working of the Federal Government, as a member of Congress, as Secretary of State and as President, his claim to remembrance rests upon the fact that, he, more than any other man, should be credited with framing the Constitution devised at Philadelphia in 1787, with defending it before the whole American community in the *Federalist* and with securing the adoption of that instrument by the convention of his native State. Mr. Hunt well says that Madison's triumphant advocacy of the Constitution in the Virginia convention marked the culmination of that part of his career which was unquestionably the greatest: "The rest was made up of earnest work and high honors, but the achievements winning for him a great place in history were those of the period before the government under the Constitution went into operation." It is certain that with his contemporaries what Madison said and wrote had greater weight in showing the intentions of the framers of the Constitution and the meaning of that instrument than was attached to the views of any other man of his time. To this day the interpreter of the charter of our Federal Government must look for light to the same source. His writings, therefore, have an actual importance and a lively interest for men in our own day.

Before glancing at some of the papers contained in this first installment of Mr. Hunt's collection, it may be well to recall in a few sentences the principal events of Madison's life up to his departure in 1787 for Philadelphia to attend the Federal Convention which was to form the Constitution. James Madison was born at Port Conway in King George county, Virginia, at the house of his maternal grandmother on March 16, 1751. In the same year he was removed to Montpelier in Orange county, where his father and himself spent their entire lives. How thoroughly Madison's experiences were rooted in Virginia is manifest from the fact brought out by Mr. Hunt that during the eighty-four years of his life the fourth President was never continually absent from Montpelier for a twelvemonth. At the age of 12 the boy James was sent to school to Donald Robertson in King and Queen county. In 1765-69 he was under the private tuition of the Rev. Thomas Martin, who lived with the Madison family at Montpelier, and was the established minister of the parish. In 1769 he entered Princeton College, and graduated thence in October, 1771. In 1776 he was elected a member for Orange county of the Virginia Convention, wherein, having been appointed on the committee to draft the Declaration of Rights, he offered an amendment for greater religious liberty, which, had it been adopted would have rendered any further action in that direction needless. Later in 1776 he took his seat in the House of Delegates and met Thomas Jefferson. Two years afterward he became a member of the Governor's Council, and in 1779 was chosen a representative of Virginia in the Continental Congress. In January, 1786, he caused the Virginia House of Delegates to pass a bill for a federal convention to consider commercial regulations. He was named as a delegate, and took part in the abortive convention which was held in October of the same year at Annapolis. In December, 1786, he introduced in the Virginia Assembly resolutions for the appointment of delegates to a new federal convention to be held at Philadelphia, and having been made a delegate for Virginia he took the most influential part in the proceedings of that body.

As a member of the Congress organized under the Articles of Confederation, Madison of course had become alive to the defects of that instrument of union. Imperfect as those Articles were, they undoubtedly represented, as Mr. Hunt points out, as close an approach to national unity as the Thirteen States could have been induced to accept at the time of their adoption. During the years that followed the acknowledgment of our independence by Great Britain in 1783 it became a more and more urgent question whether the States could not be persuaded to assent to such a modification of the Articles as would assure greater power to the Federal Government. It is the papers revealing Madison's views of this subject to which the reader of these volumes will naturally turn with especial curiosity. In a letter to James Monroe dated Jan. 22, 1786, Madison mentions the appointment by Virginia of commissioners to meet commissioners from other States at Annapolis to discuss commercial regulations. "The expedient," he writes, "is no doubt liable to objections, and will probably miscarry. I think, however, it is better than nothing, and as a recommendation of additional powers to Congress is within the purview of the commission, it may possibly lead to better consequences than at first occurred."

In a subsequent letter to Monroe dated March 19 of the same year we read: "You say that 'the question of policy is whether it will be better to correct the vices of the Confederation by recommendation [on the part of Congress] gradually as it moves along or by a convention. If the latter should be determined on the powers of the Virginia Commission are inadequate. If all on whom the correction of these vices depends were well informed and well disposed, the mode would be of little moment. But as we have both ignorance and iniquity to combat, we must defeat the designs of the latter by humoring the prejudices of the former. The efforts for bringing about a correction through the medium of Congress have miscarried. Let a Convention, then, be tried. If it succeeds in the first instance, it can be repeated as other defects force themselves on the public attention, and as the public mind becomes prepared for further remedies. The Assembly here would refer nothing to Congress. They would have revolted equally against a plenipotentiary commission to their deputies for the convention. The option, therefore, lay between doing what was done and doing nothing. Whether a right choice was made time only can prove. I am not in general an advocate for temporizing or partial remedies. But a rigor in this respect, if pushed too far, may hazard everything. If the present paroxysm of our affairs be totally neglected our cause may become desperate. If anything comes of the Convention, it will probably be of a permanent, not a temporary nature, which, I think, will be a great point."

On March 19 of the year named Monroe communicated to Madison the fact that New Jersey, having lately taken into consideration the late requisition for money made by Congress, the house of delegates resolved that "having entered into the Confederation upon terms highly disadvantageous to that State from the necessity of public affairs at the time, and a confidence that those points in which they were agreed would be remedied, and finding that this was not the case, and a compact founded in such unequal principles likely by their acquiescence to be fettered on them, they would not, therefore, comply with the same until their grievances were redressed." Madison recognized that the incident was a grave one. Under date of April 9, 1786, he writes to Monroe as follows: "The step taken by New Jersey was certainly a rash one, and will furnish fresh pretexts to unwilling States for withholding their contributions. In one point of view, however, it furnishes a salutary lesson. Is it possible with such an example before our eyes of impotency in the federal system, to remain sceptical with regard to the necessity of infusing more energy into it? A Government cannot long stand which is obliged in ordinary course of its administration to court a compliance with its *Constitutional* acts from a member not of the most powerful order, situated within the immediate verge of authority, and apprised of every circumstance which should remonstrate against disobedience. The question whether it be possible and worth while to preserve the Union of the States must be speedily decided some way or other. Those who are indifferent to its preservation would do well to look forward to the consequences of its extinction. The prospect to my eye is a gloomy one indeed."

In a letter to Jefferson, penned on Aug. 12 of the same year, Madison mentions that the States which had appointed deputies to the Federal Convention at Annapolis, were New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware and Virginia. He goes on to say that "Connecticut declined, not from a dislike to the object [the general regulation of commerce] but to the idea of a convention which, it seems, has been rendered obnoxious by some internal Conventions, which embarrassed the Legislative Authority. Maryland, or rather her Senate, negatived an appointment [of commissioners] because they supposed the measure might interfere with the plans or prerogatives of Congress [which itself was mooting a federal convention for larger purposes]. North Carolina has had no Legislative meeting since the proposition was communicated. South Carolina supposed she had sufficiently signified her concurrence in a general regulation of trade by vesting the power in Congress for fifteen years. Many gentlemen, both within and without Congress, wished to make this meeting subservient to a plenipotentiary Convention for amending the Confederation. Though my wishes are in favor of such an event, yet I despair so much of its accomplishment at the present crisis that I do not extend my views beyond a commercial Reform. To speak the truth, I almost despair even of this." It is well known that nothing came of the Convention held at Annapolis. Writing from that place to James Monroe on Sept. 11, 1786, Madison said: "Delaware, New Jersey and Virginia alone are on the ground; two commissioners attend from New York, and one from Pennsylvania. Unless the sudden attendance of a much more respectable number takes place, it is proposed to break up the meeting with a recommendation of another time and place, and an intimation of the expediency of extending the plan to other defects of the Confederation."

Before adjourning, the Annapolis Convention recommended that a plenipotentiary convention should meet at Philadelphia in May, 1787. In a letter written at Richmond on Nov. 8, 1786, Madison tells George Washington that "the expediency of complying with the recommendation from Annapolis in favor of a general revision of the Federal system was unanimously agreed to by the Virginia Assembly. A bill for the purpose is now depending, and in a form which attests the most federal spirit. As no opposition has been yet made and it is ready for a third reading, I expect it will soon be before the public. It has been thought advisable to give this subject a very solemn dress and all the weight that could be derived from a single State. This idea will be pursued in the selection of characters to represent Virginia in the Federal Convention. You will infer our earnestness on this point from the liberty which will be used of placing your name at the head of them. How far this liberty may correspond with the ideas by which you ought to be governed will be best decided when it must ultimately be decided. In every event it will assist powerfully in marking the zeal of our Legislature and its opinion of the magnitude of the occasion." In a reply Washington gave some reasons for declining to accept the appointment of delegate to the Philadelphia Convention. Madison recurs to the subject under date of Dec. 7, 1786: "It was the opinion of every judicious friend whom I consulted that your name could not be spared from the deputation to the meeting in May at Philadelphia. It was supposed in the first place that the peculiarity of the mission and its acknowledged preëminence over every other public object may possibly reconcile your undertaking it with the respect which is justly due and which you wish to pay to the late officers of the army; and in the second place that although you should find that or any other consideration an obstacle to your attendance on the service, the advantage of having your name in the front of the appointment as a mark of the earnestness of Virginia, and an invitation to meet select characters from every part of the Confederacy, ought, at all events to be made use of. In these sentiments, I own, I fully concurred, and flatter myself that they will at least apologize for my departure from those held out in your letter. I even flatter myself that they will merit a serious consideration with yourself, whether the difficulties which you enumerate ought not to give way to them." In the same letter Madison writes: "I am entirely convinced, from what I observe here [at Richmond] that, unless the project of Congress [for ceding to Spain the Mississippi for twenty-five years] can be reversed, the hopes of carrying this State into a proper Federal system will be demolished. Many of our most Federal leading men are extremely soured with what has already passed. Mr. [Patrick] Henry, who has been hitherto the champion of the Federal cause, has become a cold advocate and in the event of an actual sacrifice of the Mississippi by Congress will unquestionably go over to the opposite side." Washington had felt that to serve in the Federal Convention when the Society of the Cincinnati were in session in the same city might put him in a false position. He finally yielded, however, to the pleadings of his friends.

There was some doubt as to whether the Congress of the Confederation should recommend the Federal Convention which had been called to meet at Philadelphia in May, 1787. On one side it had been urged that some of the backward States might have scruples against taking part in the Convention without some Constitutional sanction; on the other hand, it was suggested that certain States might regard any interference on the part of Congress as proceeding from the same centralizing views which already had excited jealousies. A reference to this matter will be found in a letter written by Madison from New York on Feb. 24, 1787, to Edmund Pendleton: "The only step of moment taken by Congress since my arrival has been a recommendation of the proposed meeting in May for revising the Federal Articles. Some of the States, considering this measure as an extra-Constitutional one, had scruples against concurring in it without some regular sanction. By others it was thought best that Congress should remain neutral in the business as the best antidtoe for the jealousy of an ambitious desire in them to get more power into their hands. This suspense was at length removed by an instruction from this State [New York] to its delegates to urge a recommendatory resolution in Congress which accordingly passed a few days ago. Notwithstanding this instruction from New York, there is room to suspect her disposition not to be very federal, a large majority of her house of delegates having very lately entered into a definite refusal of the impost, and the instruction itself having passed in the [State] Senate by a casting vote only. In consequence of the sanction given by Congress, Massachusetts, it is said, will send deputies to the Convention, and her example will have great weight with the other New England States. The States from North Carolina to New Jersey inclusive have made their appointments, except Maryland, who has as yet only determined that she will make them. The gentlemen here from South Carolina and Georgia expect that those States will follow the general example. Upon the whole, therefore, it seems probable that a meeting will take place and that it will be a pretty full one." Here it may be worth while to remark that the recommendation of the Convention made by Congress was couched in a very different form from that originally proposed, the substitution being made at the suggestion of Massachusetts. The resolution originally proposed ran as follows: "Congress having had under consideration the letter of John Dickinson, Esq., Chairman of the Commissioners who assembled at Annapolis during the last year, also the proceedings of the said commissioners, and entirely coinciding with them as to the inefficiency of the Federal Government, and the necessity of devising such further provisions as shall render the same adequate to the exigencies of the Union, do strongly recommend to the different legislatures to send forward delegates to meet the proposed convention on the second Monday in May next at the City of Philadelphia." It was a much more colorless resolution which Massachusetts suggested, which was ultimately adopted: "Resolved, that in the opinion of Congress it is expedient that on the second Monday in May next a convention of delegates who shall have been appointed by the several States be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union."

In the same letter to Edmund Pendleton, from which we have just quoted, Madison says that what the issue of the Philadelphia Convention would be "is among the arcana of futurity, and nearly as inscrutable as any of them. In general, I find men of reflection much less sanguine as to the new than despondent as to the present system. Indeed, the present system neither has nor deserves advocates; and if some very strong props are not applied will quickly tumble to the ground. No money is paid into the public treasury; no respect is paid to the federal authority. Not a single State complies with the requisitions; several pass them over in silence, and some positively reject them. The payments ever since the peace have been decreasing, and of late fall short even of the pittance necessary for the civil list of the Confederacy. It is not possible that a government can last long under these circumstances. If the approaching Convention should not agree on some remedy, I am persuaded that some very different arrangement will ensue. The late turbulent scenes in Massachusetts [Shay's Rebellion] and infamous ones in Rhode Island have done inexpressible injury to the republican character in that part of the United States; and a propensity toward monarchy is said to have been produced by it in some leading minds. The bulk of the people will probably prefer the lesser evil of the partition of the Union into three more practicable and energetic governments. The latter idea I find, after long confinement to individual speculations and private circles, is beginning to show itself in the newspapers. But, though it is a lesser evil, it is so great a one that I hope the danger of it will rouse all the real friends of the Revolution to exert themselves in favor of such an organization of the Confederacy as will perpetuate the Union and redeem the honor of the republican name."

What Madison hoped to see accomplished by the Federal Convention at Philadelphia was outlined by him in a letter written from New York to Thomas Jefferson (then in Paris) and dated March 19, 1787. Madison began by saying that he could not foresee the result of the political experiment to be made at Philadelphia. "The difficulties which present themselves are, on one side, almost sufficient to dismay the most sanguine, whilst on the other side, the most timid are compelled to encounter them by the mortal diseases of the existing Constitution. These diseases need not be pointed out to you, who so well understand them. Suffice it to say that they are at present marked by symptoms which are truly alarming, which have tainted the faith of the most orthodox Republicans, and which challenge from the votaries of liberty every concession in favor of stable government not infringing fundamental principles, as the only security against an opposite extreme of our present situation." Madison proceeded to show what remedies for the existing shortcomings would be effective, and, perhaps, attainable. "I think, myself, that it would be expedient in the first place, to lay the foundation of the new system in such a ratification by the people themselves of the several States as will render it clearly paramount to their Legislative authorities. Secondly, over and above the positive power of regulating trade and sundry other matters in which uniformity is proper, to arm the Federal head with a negative *in all cases whatsoever* on the local Legislatures. Without this defensive power, experience and reflection have satisfied me that however ample the Federal powers may be made or however clearly their boundaries may be delineated on paper, they will be easily and continually baffled by the Legislative sovereignties of the State. The effects of this provision would be not only to guard the National rights and interests against invasion, but also to restrain the States from thwarting and molesting each other and even from oppressing the minority within themselves by paper money and other unrighteous measures which favor the interests of the majority. In order to render the exercise of such a negative prerogative convenient, an emanation of it must be vested in some set of men within the several States, so far as to enable them to give a temporary sanction to laws of immediate necessity." In the third place Madison was convinced of the necessity of changing the principle of representation in the Federal system. He pointed out that, so long as the execution of the acts of Congress should depend on the several Legislatures, the equality of votes possessed by the States in Congress could not destroy the inequality of importance and influence in the State. In case, however, of such an augmentation of the Federal power as should render it efficient without the intervention of the Legislatures, a vote in the General Councils from Delaware would be of equal value with one from Massachusetts or Virginia. Madison does not express himself clearly in the letter to Jefferson, but it is evident that he thinks the representation of a State in the Federal Assembly should be made proportionate to its population. This change he pronounces at once just and practicable. "A majority of the States conceive that they will be gainers by it. It is recommended to the Eastern States by the actual superiority of their populousness and to the Southern by their expected superiority; and, if a majority of the larger States concur, the fewer and smaller States must finally bend to them. This point being gained, many of the objections now urged in the leading States against renunciations of power will vanish." In the fourth place, Madison thought that the Federal power should be organized in such a manner as not to blend together those which ought to be exercised by separate departments. "The limited powers now vested in Congress are frequently mismanaged from the want of such a distribution of them. What would be the case under an enlargement not only of the powers, but of the number of the Federal representatives?"

In order to comprehend the plan of government which Madison had in view before entering the Philadelphia Convention, this letter to Jefferson ought to be read in connection with that of April 8 to Edmund Randolph, just elected Governor of Virginia, and that of April 16 to Washington. From the letter to Randolph we learn that the expectation that the Governor would not find the necessary leisure to formulate a plan, coupled with the probability that some leading propositions at least would be looked for from Virginia, had caused Madison to give the subject a great deal of attention. He submits concisely to the Governor the ideas that have occurred to him, leaving detailed explanations for a personal interview. "I think with you," writes Madison, "that it will be well to retain as much as possible of the old Confederation, though I doubt whether it may not be best to work the valuable articles into the new system, instead of engrafting the latter on the former. I am, also, perfectly of your opinion that, in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am sure that it will be practicable to present the several parts of the reform in so detached a manner to the States as that a partial adoption will be binding. Particular States may view different articles as conditions of each other and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratification of both would go for nothing. I have not, however, examined this point thoroughly. In truth, my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change that they scarcely admit of the expedient."

Madison next propounds the fundamental assumption that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. He insists at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. "Let it be tried, then," he says, "whether any middle ground can be taken which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful." [illegible] Madison thinks that the first step should be a change in the principle of representation. "According to the present form of the union and quality of suffrage between the States in Congress, [illegible] toward the larger members of it, [illegible] be safe to them, as the liberty they exercise of rejecting or executing the acts of Congress is uncontrollable by the nominal sovereignty of Congress. Under a system which would operate without the intervention of the State, the case would be materially altered. A vote from Delaware would have the same effect as one from Massachusetts or Virginia."

Further concessions to the Federal Government are suggested: "Let the National Government be armed with a positive and complete authority in all cases where uniform measures are necessary, as in trade, &c. Let it also retain the powers which it now possesses. Let it have a negative in all cases whatsoever on the legislative acts of the States, as the King of Great Britain heretofore had. This, I conceive to be essential, and the least possible abridgement of the State sovereignty. Without such a defensive power every positive power that can be given on paper will be unavailing. It will also give internal stability to the States. There has been no moment since the peace at which the Federal assent would have been given to paper money." Madison tells Randolph that, in his opinion, the national supremacy should be extended also to the judiciary department. "If the Judges in the last report depend on the States, and are bound by their oaths to them, and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the tribunals to the policy or prejudices of the States. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern foreigners or inhabitants of other States. The Admiralty jurisdiction may be fully submitted to the National Government."

It is obvious that a Government formed of such extensive powers ought to be well organized. Madison thinks that "the Legislative Department may be divided into two branches. One of them to be chosen every ——years by the Legislatures, or the people at large; the other to consist of a more select number, holding their appointments for a longer term, and going out in rotation. Perhaps the negative on the State laws may be most conveniently lodged in this branch. A Council of Revision may be superadded, including the great ministerial officers. A National Executive will also be necessary. I have scarcely ventured to form my own opinion yet, either of the manner in which it ought to be constituted or of the authorities with which it ought to be clothed." The outline of a Federal government thus submitted to Governor Randolph was to include an article expressly guaranteeing the tranquillity of the States against internal as well as external danger. To give the new system proper energy, Madison deemed it desirable to have it ratified by the authority of the people, and not merely by that of the Legislatures.

The letter to Randolph concludes as follows: "I am afraid you will think this project, if not extravagant, absolutely unattainable and unworthy of being attempted. Conceiving it myself to go no further than is essential, the objections drawn from this source are to be laid aside. I flatter myself, however, that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the States and those, too, of most influence. The Northern States will be reconciled to it by the *actual* superiority of their populousness; the Southern by their *expected* superiority on this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant will. It is also already seen by many, and must by degrees be seen by all, that unless the Union be organized efficiently on republican principles, innovations of a much more objectionable form may be obtruded or, in the most favorable event, the partition of the empire into rival and hostile confederacies will ensue."

We pass to the letter addressed on April 16 to George Washington, who about a fortnight before had communicated to Madison his views of the reforms which ought to be pursued by the Philadelphia Convention. It will be observed in Madison's reply that the ideas outlined in the previous letter to Randolph have now taken more definite form in the writer's mind. "Conceiving," begins Madison, "that an individual independence of the States is utterly irreconcilable with their aggregate sovereignty, and that a consolidation of the whole into one simple republic would be as inexpedient as it is unattainable, I have sought for middle ground, which may at once support a due supremacy of the national authority and not exclude the local authorities wherever they can be subordinately useful." As the groundwork of such a compromise Madison repeats his proposal that a change should be made in the principle of representation. That is to say, the States should be represented in the Federal Congress, not equally, as they were under the Articles of Confederation, but proportionately to their population. To Washington as to Randolph the belief is expressed that such a change could be brought about without much difficulty. "A majority of the States, and those of greatest influence, will regard it as favorable to them. To the Northern States it will be recommended by their present populousness, to the Southern by their expected advantage in this respect. The lesser States must in every event yield to the predominant will. But the consideration which particularly urges a change in the representation is that it will obviate the principal objections of the larger States to the necessary concessions of power."

Continuing the exposition of his plan to Washington, the writer of the letter from which we are now quoting would next propose that "in addition to the present federal powers, the national Government should be armed with positive and complete authority in all cases which require uniformity, such as the regulation of trade, including the right of taxing both exports and imports, the fixing the terms and forms of naturalization. [illegible] Over and above this positive power, a negative in all cases whatsoever on the legislative acts of the States, as heretofore exercised by the kingly prerogative, appears to me to be absolutely necessary, and to be the least possible encroachment on the State jurisdictions. Without this defensive power, every positive power that can be given on paper will be evaded and defeated. The States will continue to invade the national jurisdiction, to violate treaties and the law of nations and to harass each other with rival and spiteful measures dictated by mistaken views of interest. Another happy effect of this prerogative would be its control on the internal vicissitudes of State policy and the aggressions of interested majorities on the rights of minorities and of individuals. The great desideratum which has not yet been found for republican governments seems to be some disinterested and dispassionate umpire in disputes between different passions and interests in the State. The majority, who alone have the right of decision, have frequently an interest, real or supposed, in abusing it. In monarchies the sovereign is more neutral to the interests and views of the different parties; but, unfortunately, he too often forms interests of his own repugnant to those of the whole. Might not the national prerogative here suggested be found sufficiently disinterested for the decision of local questions of policy, whilst it would itself be sufficiently restrained from the pursuit of interests adverse to those of the whole society? There has not been any moment since the peace at which the representatives of the Union would have given an assent to paper money or any other measure of a kindred nature."

Madison then repeats in slightly different terms what he had said to Randolph about a Federal judiciary: "The national supremacy ought also to be extended, as I conceive, to the judiciary departments. If those who are to expound and apply the laws are connected by their interests and their oaths with the particular States wholly, and not with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems at least necessary that the oaths of the Judges should include a fidelity to the general as well as local Constitution, and that an appeal should lie to some national tribunals in all cases to which foreigners or inhabitants of other States may be parties. The admiralty jurisdiction seems to fall entirely within the purview of the national government." Madison now comes to a matter in which his correspondent, Washington, was to be, though as yet he knew it not, preëminently interested. One cannot but believe, however, that the writer of this letter must have foreseen the necessity of making Washington the head of the projected constitutional government, if that political experiment were to have any chance of success. "The national supremacy," we read, "in the Executive departments, is liable to some difficulty, unless the officers administering them could be made appointable by the supreme government. The militia ought certainly to be placed in some form or other under the authority which is entrusted with the general protection and defence. A National Executive must be provided. I have scarcely ventured as yet to form my own opinion, either of the manner in which it ought to be constituted, or of the authorities with which it ought to be clothed."

With regard to the legislative department, Madison suggests that it might be "divided into two branches, one of them chosen every —— years by the people at large or by the [State] Legislatures; the other to consist of pure members, to hold their places for a longer term, and to go out in such a rotation as always to leave in office a large majority of old members. Perhaps the negative on the laws might be most conveniently exercised by this branch. As a further check, a council of revision, including the great ministerial officers, might be superadded."

As in the letter to Randolph, emphasis is laid on the expediency of giving the Federal Government the power of interference for the purpose of maintaining internal order within any State. Should the Federal Government have the power to coerce a State? This question, which was to acquire such momentous interest, is mooted in the letter to Washington from which we are now quoting. Madison expresses the opinion that "the right of coercion should be expressly declared. With the resources of commerce in hand, the national administration might always find means of exerting it, either by sea or land. But the difficulty and awkwardness of operating by force on the collective will of a State, render it particularly desirable that the necessity of it might be precluded. Perhaps the negative of the laws might create such a mutuality of dependence between the general and particular authorities as to answer this purpose, or, perhaps, some defined objects of taxation might be submitted along with commerce to the general authority." We observe, finally, that the necessity of obtaining for the new instrument of government the most conclusive sanction is reiterated in this letter: "To give a new system its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the Legislatures. This will be the more essential as inroads on the *existing Constitutions* of the States will be unavoidable." Thus we see how it came to pass that State conventions were called upon to accept the Federal Constitution framed at Philadelphia. Why the assent of State Legislatures would not suffice is again pointed out six days later in a letter to Edmund Pendleton: "The nearer the crisis approaches the more I tremble for the issue. The necessity of gaining the concurrence of the convention in some system that will answer the purpose, the subsequent approbation of Congress and the final sanction of the States, presents a series of chances which would inspire despair in any case where the alternative was less formidable. The difficulty, too, is not a little increased by the necessity which will be produced by encroachments on the State Constitutions, of obtaining not merely the assent of the State Legislatures, but the ratification of the people themselves. Indeed, if such encroachments could be avoided, a higher sanction than the Legislative authority would be necessary to render the laws of the Confederacy paramount to the acts of its members."

The last of the letters printed in the two volumes now before us is addressed to Thomas Jefferson under date of April 23, 1787, and closes with an estimate of the prospects of the Federal Convention. This letter is followed by a reproduction from Madison's manuscripts of three very important papers. The first of these, containing "observations by J. M." on the vices of the political system of the United States, and dated April, 1787, is reprinted from a copy of the original document lent by permission by Daniel Carroll, and sent to Charles Carroll of Carrollton. The second paper is an account "of ancient and modern confederacies." Mr. Hunt tells us that [illegible]

[illegible]

In his observations [illegible] political system [illegible] United States at the time [illegible] the Federal Convention met in Philadelphia, Madison [illegible] attention to [illegible] fundamental want of ratification by the people of the Articles of Confederation, a want which he and other far-seeing men took care to guard against in the case of the new Constitution. "In some of the States," writes Madison, "the Confederation is recognized by, and forms a part of, the Constitution. In others, however, it has received no other sanction than that of the legislative authority. From this defect two evils result: First. Whenever a law of a State happens to be repugnant to an act of Congress, particularly when the former is of posterior date to the latter, it will be at least questionable whether the former must not prevail; and, as the question must be decided by the tribunals of the State, they will be most likely to lean on the side of the State." The second evil which, in Madison's eyes, resulted from the acceptance of the Articles of Confederation by a State *Legislature*, instead of by the people of the State, requires particular notice, for it throws light upon the question whether, in the writer's opinion, the right to coerce a State would be vested in the Federal Government by the new Constitution, if it should have been adopted by the people of the State concerned. "Second. As far as the union of the States is to be regarded as a league of sovereign powers, and not as a political Constitution, by virtue of which they are become one sovereign power, so far it seems to follow from the doctrine of compacts, that a breach of any of the articles of the Confederation by any of the parties to it, absolves the other parties from their respective obligations, and gives them a right, if they choose to exert it, of dissolving the union altogether." From these words it seems to follow that at this time Madison believed, first, that the existing Articles of Confederation were under certain circumstances dissolvable by any State which had accepted them only through an act of its Legislature, but that the Constitution to be framed at Philadelphia, if accepted not merely by State Legislatures, but by the people of the respective States, would not be thus dissoluble. That is to say, at this time Madison considered the Articles of Confederation a "compact" as between certain parties to them, but did not consider that the new Constitution, if accepted as it was to be, could properly bear the description of a "compact" which Calhoun was to give it.

Among the defects of the Articles of Confederation designated by Madison four may be particularly mentioned. The first had been brought home to everybody, to wit: the failure of the States to comply with the Constitutional requisitions for money. "This evil," says Madison, "has been so fully experienced, both during the war and since the peace, results so naturally from the number and independent authority of the States, and has been so uniformly exemplified in every similar Confederacy, that it may be considered as not less radically and permanently inherent in, than it is fatal to, the object of the present system." Turning to a second defect, namely, encroachments by the States on the Federal authority, Madison notes that "examples of this are numerous and repetitions may be foreseen in almost every case where any favorite object of a State shall present a temptation. Among these examples are the wars and treaties of Georgia with the Indians; the unlicensed compacts between Virginia and Maryland and between Pennsylvania and New Jersey, and the troops raised and to be kept up by Massachusetts." A third defect in the Articles of Confederation was the impossibility of preventing violations by the several States of the law of nations and of treaties. On this point Madison remarks: "From the number of Legislatures, the sphere of life from which most of their members are taken and the circumstances under which their legislative business is carried on, irregularities of this kind must frequently happen. Accordingly, not a year has passed without instances of them in some one or other of the States. The Treaty of Peace—the treaty with France—the treaty with Holland—have each been violated. The causes of these irregularities must necessarily produce frequent violations of the law of nations in other respects. As yet, foreign Powers have not been rigorous in animadverting on us. This moderation, however, cannot be mistaken for a permanent partiality to our faults, or a permanent security against those disputes with other nations, which, being among the greatest of public calamities, it ought to be least in the power of any part of the community to bring on the whole."

The last defect of the articles of confederation to which we shall here refer was the propensity of the States to commit trespasses on the rights of one another. "These trespasses," says Madison, "are alarming symptoms, and may be daily apprehended, as we are admonished by daily experience. See the law of Virginia restricting foreign vessels to certain ports of Maryland in favor of vessels belonging to her *own citizens*—of New York in favor of the same. Paper money, installments of debts, occlusion of courts, making property a legal tender, may likewise be deemed aggressions on the rights of other States. As the citizens of every State, aggregately taken, stand more or less in the relation of creditors or debtors to the citizens of every other State, acts of the debtor-State in favor of debtors affect the creditor State in the same manner as they do its own citizens, who are relatively creditors toward other citizens. This remark may be extended to foreign nations. If the exclusive regulation of the value and alloy of coin was properly delegated to the Federal authority, the policy of it equally requires a control on the States in the cases above mentioned. It must have been meant, first, to preserve uniformity in the circulating medium throughout the nation; second, to prevent those frauds on the citizens of other States and the subjects of foreign powers which might disturb the tranquillity at home or involve the Union in foreign contests."

The paper on the "Origin of the Constitutional Convention," held at Philadelphia in 1787, states that the writer has inserted a copy of the letter of April 8, 1787, to Gov. Edmund Randolph, from which letter we have quoted above. Madison, writing in 1835, describes that letter as containing, perhaps, the earliest sketch on paper of a constitutional government for the Union to be sanctioned by the people of the States, acting in their original and sovereign character, instead of by the Legislatures.

It is well known to readers of the debates in the Philadelphia Convention that our existing Constitution is the outcome of a compromise between the so-called Virginia plan and the so-called New Jersey plan. It is probable that Madison had more to do with the genesis of the Virginia plan than any other citizen of Virginia, though his ideas as expounded in the letters to Randolph, Washington and Jefferson, were somewhat modified in the course of his consultation with Gov. Randolph, George Mason and other Virginia delegates. [illegible]

[illegible] the people of the United States could be persuaded to accept.

M. W. H.