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CONTENTS

Articles:	PAGE
The Letters of William Loughton Smith to Edward Rutledge, June 6, 1789 to April 28, 1794, edited by George C. Rogers, Jr.	1
South Carolina's Compliance with the Militia Act of 1792, by Jean Martin Flynn	26
Loyalists and the American Revolution: Thomas Brown and the South Carolina Backcountry, 1775-1776, by Gary D. Olson	44
A Note on "A French Account of the Siege of Charleston, 1780," by Richard K. Murdoch	57
The Schirmer Diary	59
Reviews:	
Walsh, <i>The Writings of Christopher Gadsden, 1746-1805</i> , by Robert M. Weir	66
Klein, <i>Slavery in the Americas, A Comparative Study of Vir- ginia and Cuba</i> , by George C. Rogers, Jr.	67
Scarborough, <i>The Overseer: Plantation Management in the Old South</i> , by Stuart Noblin	68
Langley, <i>Social Reform in the United States Navy, 1798-1862</i> , by Tom Henderson Wells	69
Moore, <i>Before and After; or, the Relations of the Races at the South</i> , by Ernest L. Lander	70
Notes	73
Archives News	77

THE LETTERS OF WILLIAM LOUGHTON SMITH
TO EDWARD RUTLEDGE

June 6, 1789 to April 28, 1794

EDITED BY GEORGE C. ROGERS, JR.

These letters of William Smith (he added the middle name of Loughton in 1804) to Edward Rutledge were purchased by the South Carolina Historical Society shortly after the publication in 1962 of my biography of Smith, *Evolution of a Federalist, William Loughton Smith of Charleston (1758-1812)*. These letters, which will be printed in this and the three succeeding issues of the *Magazine*, represent one of the largest and most important collections of the papers of William Loughton Smith. They help to fill in the story of Smith's political career. The information contained in them, however, does not alter in any significant way the interpretation of Smith's career as presented in my biography. Indeed they strengthen the statement that Smith relied upon Edward Rutledge and also General Charles Cotesworth Pinckney for advice during his first years in Congress. As these letters become less frequent in 1793 and as the correspondence apparently ends in April 1794, they substantiate the view that in the latter year Smith cut his ties with the Rutledge-Pinckney faction in South Carolina.

This first group of letters was written in the summer of 1789 while Smith was busy in Congress helping to set up the new United States government. Smith was most perceptive in his forecast that the men who wished to strengthen the new government would do so by construing the powers described in the Constitution broadly. He therefore was in favor of adding the amendment that became the tenth, and he was apparently supporting this amendment in order to protect the interests of South Carolina, particularly her interest in slavery. At this point he was opposed to Hamiltonian constructions of the constitution. Later he was to be a principal lieutenant of Alexander Hamilton.

In editing these letters for publication, the following changes have been made: the date of the letter has been written in a uniform fashion at the head of each letter; a comma has been inserted after the salutation; all words that have been shortened by dropping the penultimate letters have been written out and all superscripts brought down to the line; indecipherable words, concerning which the editor has suggested a reading, have been added in brackets; portions of sentences where the manuscript has been torn or where the words are completely indecipherable have

been so designated; longer passages have been broken up into paragraphs.

New York, June 6, 1789

My dear Sir,

I had this morning the satisfaction of receiving your very friendly Letter, for which and its contents I return you many thanks. I have also had the pleasure of seeing your Son¹ who is greatly improv'd in his looks since I last saw him. As this (Saturday) is our holiday, I took him a walk about the town, shewed him the Federal hall & other curiosities & brought him home to dine with us & he is now in the parlour tete a tete with Mrs. Smith.²

Tho your very kind hints to me respecting my contest with R.³ arrived too late for me to avail myself of them, I am under equal obligations to your friendship—your interesting yourself [*torn*] in this business affords me the highest pleasure by [*torn*] me that you have a regard for me—be assured that this is a circumstance which will always contribute greatly to my happiness—it will be an incentive to me so to conduct myself on all occasions as never to forfeit the Esteem of a person whose countenance & good opinion I shall ever prize.

The ideas you entertained on the report of the Committee,⁴ suggested themselves to several members, who got that part struck out & nothing was inserted in lieu of it on the idea that it was generally understood that I had that right. One of the members said that until it was determined that my right to my seat was not valid, that I had every right & privilege which the other Members enjoyed & this was generally agreed to.

¹ Henry Middleton Rutledge (1775-1844).

² Smith had married Charlotte Izard (1770-1792), the second daughter of Senator Ralph Izard.

³ After Smith had defeated Dr. David Ramsay in the election for a seat in the new national House of Representatives from Charleston District, Ramsay petitioned Congress, asking that Smith be disqualified in as much as he had not been for seven years a citizen of the new United States. For a discussion of this matter see Rogers, *Evolution of a Federalist*, pp. 169-171.

⁴ Smith sent Rutledge a copy of the report of the committee on elections which had been read on April 18. "That part" refers to passages denying Smith the right to examine witnesses and offer counter proofs in his own behalf. The report was amended on April 29 to permit him to do these things. *Annals of the Congress of the United States*, Washington, 1834, I (first Congress), 231. (Hereafter referred to as *Annals*.)

With regard to my political character, it never became in the most indirect manner a subject of inquiry—in the course of my Speech⁵ I observed that had I thought any doubt could occur respecting my attachment to the Cause of America I could have procured sufficient testimony of it, but that such a doubt had never been suggested at home & that it would have been a reflexion on my constituents to have gone into any such proof—Vining, of Delaware,⁶ was a warm advocate of mine—old Sherman,⁷ of Connecticut, was absent with leave & returned a few days after—he says he read Ramsay's pamphlet⁸ some time ago & was convinced from that that I was eligible. Benson,⁹ attorney general of this State, told me he thought that if a State chose to consider a person for a continuance a citizen of that state, no one had a right to call in question his citizenship, even tho in strictness he were not a citizen. Clymer¹⁰ told me that he was of opinion a man might be a citizen of two countries at the same time, that is both [*torn*] would recognize his citizenship; this he mentioned to Grout.¹¹ [*torn*] said to Clymer during the discussion of the business that he thought [I] was a british subject while I was in England.

I imagine Grout wo[uld] not have voted in the negative had not Boudinot¹² set him the example. Therefore I owe the want of unanimity to this gentleman who is an intimate friend of Ramsay's & who has been endeavoring to disseminate doubts from the beginning of this affair—at first he insisted, in a conversation with me, that our Laws had nothing to do with the question & that it was a question of civil Law; when he found that the House were of a different opinion, he argued, in the house, that he never would admit the doctrine that all the natives of America were American citizens & that I became a citizen at the revolution, but he thought that I was under particular circumstances & was

⁵ Smith spoke at length on May 22 in his own behalf.

⁶ John Vining of Delaware.

⁷ Roger Sherman of Connecticut.

⁸ Later printed as David Ramsay, *Observations on the Decision of the House of Representatives of the United States, on the 22nd Day of May, 1789; Respecting the Eligibility of the Hon. William Smith, of South-Carolina, to a Seat in that House*, New York, 1789.

⁹ Egbert Benson of New York.

¹⁰ George Clymer of Pennsylvania.

¹¹ Jonathan Grout of Massachusetts.

¹² Ramsay had sent his pamphlet to Elias Boudinot of New Jersey with the request that it be printed and a copy sent to each member of Congress. David Ramsay to Elias Boudinot, March 31, 1789, Gratz Collection, Penn. Hist. Soc. There was a delay, and the pamphlet was not printed until after Smith had won his case. Ramsay and Boudinot had a mutual acquaintance in Rev. William Tennent, the Congregational minister in Charleston.

absent with the Leave of the Legislature of our State—he therefore would vote that I was a citizen of seven years, but not that I was citizen at the declaration of independence—now, unless I became a citizen by the declaration of independence, I am at a loss to learn how I became one seven years ago, for at that time I was in England & did no act to make me a citizen. I am convinced that his friendship for Ramsay has induced him to behave in a very dishonorable manner on this occasion. Before the decision in my favor, he treated me with distant civility & none of that attention & familiarity which other members shewed me, but since the matter has had so favorable an issue to me, his behaviour is intirely changed, he shews me a marked civility, comes & sits by me & inquires after Mrs. Smiths health.

I am told Ramsay proposes passing the Summer here—he had better stay where he is, for he has acquired no lustre to his reputation, which will make his residence agreeable.

I am glad to find you approve of our proceedings, so far as relates to the duties on tonnage¹³—had we not cried out lustily, the New-England Delegates were disposed to make them much higher—I agree with [torn] encouragement should be given to American shipping, but were we to allow [torn] States to indulge their inclinations, they would lay a tonnage equal to [a pro]hibition on British shipping, & then we should be greatly embarassed how to export our crops—as it is, it is better than we had reason to expect, which I attribute to a spirit of conciliation which pervades the union.

The members from the Eastward have displayed much moderation—in general the House is composed of men of accomodating tempers & genteel manners: the good humour which exists amongst us is pleasing & will be attended with beneficial effects—I sincerely hope it will [be las]ting.

You approve of a discrimination between the shipping of Powers in Alliance & those who are not—Madison¹⁴ is a strong advocate for this measure—Lawrence¹⁵ is opposed to it, & so are Hamilton¹⁶ & Duer¹⁷ & several other men of abilities in this city—Mr. Izard¹⁸ also dis-

¹³ For a summary of the debate over tonnage see Rogers, *Evolution of a Federalist*, pp. 173-175.

¹⁴ James Madison of Virginia.

¹⁵ John Laurance of New York.

¹⁶ Alexander Hamilton of New York, soon to be appointed Secretary of the Treasury.

¹⁷ William Duer of New York.

¹⁸ Ralph Izard (1742-1804), senator from South Carolina and father-in-law of William Smith.

likes it—I voted for it, but, on the whole, I think much is to be said on both sides.

The Senate have struck out of the Impost Bill the discrimination between British & French Liquors & I think will strike at the discrimination on Tonnage, when they take up that Business.¹⁹ We have been employed this last week in the Collection Bill²⁰ & have made little progress. Much difficulty occurs in fixing on the proper ports of entry & delivery—whether a Vessel, having entered her cargo & secured the Duties at a specified port shall afterwards be allowed to land her cargo any where within the state, or whether there shall be assigned particular ports of delivery, at which alone she shall unlade—and whether the States shall or shall not be divided into particular districts, in each of which shall be fixed a particular port of Entry for each district—are questions which have occasioned much debate—the subject being new to many of the Members, many crude ideas have been offered & little information afforded—it is at length determined, that there shall be certain enumerated ports of Entry & delivery & certain ports of delivery only—fortunately these difficulties do not interfere with the police of our State, where our three Ports have been constituted without debate,²¹ on my nomination, ports of entry & delivery—th[ey] apply to Massachusetts, Maryland, & Georgia.

An attempt was made to lay a Duty on the importation of sl[aves]. I opposed it immediately²²—insisted on the partiality of it & the dangerous [torn] it would have in S. Car. & Georgia—the motion was withdrawn, with an intention to bring in a separte bill, as it was deemed improper to insert human beings in a bill to collect duties on goods, wares, & merchandize—some time having elapsed since the Committee were appointed to bring in the Bill, I am in hopes the friends of it are not disposed to fight a hard battle, for I assured them that I should consider myself bound to oppose it on every ground & at every stage of it,—which I shall certainly do.

¹⁹ The Senate ultimately prevented any special discrimination against Britain in the matter of tonnage.

²⁰ "An act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, and on goods, wares, and merchandises, imported into the United States," was approved on July 31, 1789. *Annals*, II, 2133-2157.

²¹ Georgetown, Charleston, and Beaufort. *Annals*, II, 2140.

²² On May 13 when a duty of \$10 on the importation of each slave had been proposed, Smith had stated: "It was certainly a matter big with the most serious consequences to the State he represented; he did not think any one thing that had been discussed was so important to them, and the welfare of the Union, as the question now brought forward. . . ." *Annals*, I, 336. The committee apparently never reported.

You did me justice in not feeling the necessity of recommending Henry to my attentions—independently of his merits & the recommendation which he carries along with him, all who are in any respect connected with you will have a claim & a powerful one to my friendship & regard—a son therefore & one who I knew is the pride of your heart (& deservedly so,) cannot but experience from me every thing which esteem, friendship, & gratitude can suggest. Mrs. Smith joins me in best compliments to Mrs. Rutledge.

Your very obliged & affectionate friend,

Wm Smith

New York, June 21, 1789

My dear Sir,

I am sorry to find by your last that the Indians have renewed their savage depredations on our unfortunate Sister State: I had previously to the receipt of this intelligence [*indecipherable*] hopes that a negotiation had taken place by which these inroads were at least suspended, if not altogether prevented. Independently of the sufferings of some of our friends with whom I heartily sympathize, I am much alarmed at these skirmishes, as they may be the prelude to a general & serious war between the United States & these Tribes. Were Congress hastily to enter into the resentful measures of Georgia & afford her succour, the Union might be involved in extreme difficulty: every thing in the Shape of treaty & accomodation should be presented to them in the first instance. Nothing has been yet brought forward publicly here, nor do I know if the Georgia Members propose any thing.²³

I have sent you some papers—& your Journals,²⁴ with General Pinckneys²⁵—also a Copy of the Judicial Bill,²⁶ & one for the General—please present them with my best regard. I sent him a set of the Journals

²³ Jackson of Georgia did make a speech on August 11 stating that Georgia had been invaded by the Creeks and that the United States had been designed to protect states from invasion. *Annals*, I, 694-697. A treaty was made in New York in August 1790 with Alexander McGillivray, the Creek chief.

²⁴ Smith was attempting to keep Rutledge fully informed of the work of Congress by forwarding the New York newspapers.

²⁵ General Charles Cotesworth Pinckney, brother-in-law of Edward Rutledge.

²⁶ This was a copy of the bill as drawn up by Oliver Ellsworth's senate committee. It was reworked during the summer and approved on September 24, 1789 as "an act to establish the judicial courts of the United States." *Annals*, II, 2182-2197.

last opportunity but had not time to write which I hope his goodness will excuse.

I wish you & he would read the Bill with great attention & send me as soon as you can your remarks on it, with your proposed alterations & the reasons for them. Don't wait till the whole is compleated, but, *currente calamo*, in your style, send a sheet at a time, trot & trot, [*torn*]. Mr. Izard has communicated to me the observations the General & yourself sent him by your Son. They shall be duly attended to—those need not be repeated, as I have a Copy of them: having the whole Bill before you, you will be able to see the advantages or defects of the whole System.

In my last, I requested you & he would send me your thoughts on a Bankrupt Bill: ²⁷ I delay bringing it in, that I may be furnished with every useful material on so difficult a subject.

You see I do all I can to avail myself of your abilities & to make you useful to your Country, in Congress, without giving you the trouble of quitting home. I have a double satisfaction in this, for while I am serving America by employing so excellent an Auxiliary, I know I am gratifying your highest wishes by making you promote the welfare of your country.

We progress slowly in Congress: the Impost Bill has past the Senate, with several amendments—some of which we have disagreed to—the Senate have adhered to them & a committee of Conference will be the result. The Bill for collecting the Impost has been discussed in a Committee of the whole & is recommitted to a special Committee—The Bill for imposing Duties on Tonnage is returned from the Senate with some very important alterations, which our House will not concur in, particularly that respecting a discrimination on the Shipping of our Allies: our House established a discrimination by a very large Majority & the Senate have abolished it in the same manner.

The Senate have resolved after a debate, that in giving their advice & consent to the nominations made by the President ²⁸ they will *ballot* & not express their opinions *viva-voce* & by debate.

You will see by the papers that we have had a debate of 4 days on the Question of giving to the President the power of removal from office.²⁹ This has been the most important question & the most solemn

²⁷ Smith had been appointed on June 1 with Laurance and Ames to prepare a bill "to establish a uniform system on the subject of bankruptcies throughout the United States." *Annals*, I, 417.

²⁸ The debate concerned the role of the Senate in the removal of the chief officers of the government who had been nominated by the President and confirmed by the Senate.

²⁹ The decision was to say nothing in the bills and thus tacitly to leave the power of removal in the hands of the president.

debate we have had since the meeting of Congress: tho' the house was nearly divided on the subject & the arguments were generally warm & animated, yet I never saw a debate conducted with so much temper & good humour. I long to know what our friends at home think of the determination—Mr. Izard, Major Butler,³⁰ & Col. Morris³¹ think it wrong; Bird³² thinks it right: I imagine the Senate will concur—it is a very delicate question for them.

In the course of my speech, I quoted the *Federalist* as an authority on my side, (see 2d vo., pa. 284)³³—the next day Benson sent me a note across the house to this effect: that *Publius*³⁴ had informed him since the preceding day's debate, that upon more mature reflection he *had changed his opinion* & was now convinced that the President alone should have the power of removal at pleasure; He is a Candidate for the office of Secretary of Finance!

While we were thus struggling & contending about the President's prerogatives, he was lying extremely ill in bed—it was not known at the time, but we have been since told, that he was in some danger—I had a long conversation yesterday with his Doctor, who informed me that the President had been troubled with a Bile on his Seat, which had been so inflamed by his riding on horseback as to grow into an Imposthume as large as my two fists—this occasioned a fever of a threatening nature—it was apprehended that it would turn to a malignant one & the Doctor sat up with him one night—the fever however abated & the Imposthume has been opened—he is now considerably better & out of all danger, but will be prevented for some time from sitting up.³⁵

He has given Mr. Jefferson³⁶ leave of absence & nominated Mr. Short,³⁷ as chargé des affaires. Some doubt arose in the Senate, upon

³⁰ Major Pierce Butler, senator from South Carolina.

³¹ Colonel Lewis Morris, of the New York family, who had married a South Carolina heiress.

³² This was most probably the Englishman Henry M. Bird. See Rogers, *Evolution of a Federalist*, p. 274, n. 111.

³³ The quotation is in *Annals*, I, 456-457. Vol. II, page 284, refers to the two-volume edition of 1788 which maintained the anonymity of the authors.

³⁴ "Publius" was the name under which Hamilton, Madison, and John Jay wrote the *Federalist Papers*. In this instance Hamilton is the author referred to.

³⁵ Washington was so ill that ropes were stretched across the street in front of his home in order to save him from the noise of passing vehicles. Douglas Southall Freeman, *George Washington*, New York, 1954, VI, 214-218.

³⁶ Thomas Jefferson at this time minister to France, was given leave to return to the United States in order to take up his duties as the new secretary of state.

³⁷ William Short replaced Jefferson temporarily.

receiving his message, whether he had not transgressed his Powers in giving Mr. J. leave, without consulting the Senate—some of the members are clearly of that opinion; the matter was however passed over, & his nomination was confirmed by Ballot. Some of the members disapproved of a single nomination & conceive that it is a practise he means to pursue & which will preclude a fair choice on their part. What a blessing to this Country is a Man in this high station who is so generally beloved that those things which would alarm & give uneasiness if committed by any one else are overlooked when done by him. I am in hopes that before his death, a number of questions will be settled, the discussion of which under his Successor would give rise to parties & factions: there is danger however to be apprehended on the other hand that some points may be conceded to him from a sense of his virtues & a confidence that he will never make an improper use of his power, which ought not to be yielded from a dread of his Successor being less virtuous & moderate.

I am sorry to hear that the Creditors³⁸ at home are pushing for their debts—I am confident that you employ all your influence with your clients to restrain this disposition: as they are now satisfied that their debts are secured to them from further interference, they should allow sufficient time to their debtors.

Our instalment Law³⁹ meets with more friends here than I expected: there is not the least idea of the Congress taking any notice of it & I avail myself of every opportunity of justifying our Legislature & convincing the people here that it was absolutely necessary for the Salvation of the Country & for the benefit of the Creditor as well as the Debtor.

About a week ago Mr. Izard's little boy Ralph⁴⁰ had the misfortune to break his thigh bone by a fall: but he is doing very well.

We have just begun to have warm weather; yesterday was extremely hot, & pleasant, for it resem[bles] Carolina.

I dined yesterday with your Son at Mr. Izards—he looks hea[lthy] & thriving—he expects to go to College in six months: George [Izard] is just entered at College.⁴¹

³⁸ For the pressure of British creditors see Rogers, *Evolution of a Federalist*, pp. 149, 159-162, 167, 250-253.

³⁹ Smith and Rutledge had cooperated in the passing of the installment law in November 1788.

⁴⁰ Ralph Izard (1785-1824).

⁴¹ George Izard (1776-1828) graduated from Philadelphia College in February 1792. This *Magazine*, II (1901), 222.

My best respects to Mrs. Rutledge & my Compliments to your fine little girl, Sarah.⁴² Farewell my dear Sir—yours with affection & esteem

Wm Smith

[P. S.] Please forward the inclosed to Mrs. Carns.⁴³

[New York] July 5, 1789

My dear Sir,

I lose no opportunity of making you acquainted with the most interesting Events of New York—they are few in number & tho not of vast importance, yet not unworthy of notice.

Those of a public nature are the passing the Impost & Tonnage [Bill] in which the principle of discrimination in favor of our Allies has after much contention, been abandoned—the Senate have been averse to it from the beginning, & our house, tho originally strongly attached to the principle, gradually gave way & finally concurred. I confess I was convinced by the arguments urged against it on the part of the Senate in the Conference & became a Convert among many others. The Bills are to commence their operation the 1st next month. Upon the whole, they are as favorable to the Southern Interests as we could have expected.

We are now busily engaged in the very voluminous bill for regulating the [collec]tion of the Impost, & the Senate as busy on the Judiciary. They have got nearly thro' it, with little alteration—I expect *we* shall not let it off so easily—Elsworth, the father of it, defends every clause valiantly⁴⁴—when it comes an orphan to us, we shall make very free with it.

The Senate proceed in a few days to the discussion of the Bills, establishing the Grand Departments⁴⁵—the Clause, vesting in the President alone, without the advice & consent of the Senate, the removal of the heads of those departments at pleasure, will occasion warm debates & probably be rejected. On counting noses, those in favor of the Clause are Morris, Carrol, Strong, Elsworth, Patterson, Read, & Henry.⁴⁶ Against

⁴² Sarah Rutledge (1782-1855).

⁴³ William Smith's sister Susannah had married Capt. Patrick Carnes in 1786.

⁴⁴ Oliver Ellsworth, senator from Connecticut, the author of the judiciary bill.

⁴⁵ These were the departments of state, treasury, and war.

⁴⁶ Robert Morris of Pennsylvania, Charles Carroll of Maryland, Caleb Strong of Massachusetts, Oliver Ellsworth of Connecticut, William Paterson of New Jersey, George Read of Delaware, and John Henry of Maryland.

it Langdon—R. H. Lee, Grayson—Izard, Butler—Maclay, Elmer—Wingate—Dalton, Gunn, Few, Johnson, & Basset.⁴⁷

It was carried in our house by a small majority—I take the numbers [to] be, were all the members present, about 35 for it & 24 against it: [On one] of the divisions, the numbers were, ayes 29—noes 22—Should the senate [stand firm,] we must give way or lose the Bills.

The Principle of a strong government is carried to extremes by some persons here, especially those who expect either to be in high offices themselves or to be the cabinet council of the President. I conceive the Constitution intended the Senate to be the constitutional council of advice to the President. These high-flyers want to depreciate the Senate & substitute a privy council, behind the Curtain.

The President is recovering fast, but cannot see company yet.

Butler was confined by an accident (which I suppose you have heard of) several days to his house⁴⁸—he has been to the Senate, [but is] still lame—On motion, it was resolved unanimously that he should be permitted to speak sitting, but he would not avail himself of this advantage. I hope, our house will pay the same Compliment to Huger,⁴⁹ when he appears again on the floor, which is however still problematical, tho he is much better & his Physicians say the Symptoms are favorable—he has not yet got over the dangerous crisis & the fracture was a very terrible one.

In considering the subject of a Bankrupt Bill several doubts have occurred to me, on which I request your sentiments; to wit:

- 1st Whether the System shall embrace all debts existing prior to the passing the Law or only those incurred subsequent to it?
- 2nd If they should be all comprehended, whether it would be proper to discriminate, making the Law milder quoad the former & more severe quoad the latter?
3. Whether the System should be confined merely to Traders or extended to all Debtors?

⁴⁷ Richard Henry Lee and William Grayson of Virginia, Izard and Butler of South Carolina, William Maclay of Pennsylvania, Jonathan Elmer of New Jersey, Paine Wingate of New Hampshire, Tristram Dalton of Massachusetts, James Gunn and William Few of Georgia, William S. Johnson of Connecticut, and Richard Bassett of Delaware.

⁴⁸ Mary Butler wrote to the Rev. William Butler, July 15, 1789, stating that Major Butler had been thrown from his chaise "three weeks ago" and his leg "wounded" and that he had only left the house that day. Butler Papers, Additional Manuscripts, #16,603, f. 64, British Museum.

⁴⁹ Daniel Huger (1741-1799), who represented the Georgetown area in Congress, was constantly absent from the House due to illness.

4. If confined to Traders, what mode should be adopted of compelling those who are not traders to give up their property to those who are?
5. Whether the General Government have a constitutional right of including in the Bankrupt Law a System of Insolvency, as incident to it?
6. Where Commission of Bankruptcy shall be sued out—& whether an Appeal & under what circumstances?

Consult some of the Merchants⁵⁰ on these points & let me have your [thoughts] fully—it's a subject of considerable consequence & I am very anxious the Bill should be well matured.

I saw your Son yesterday—he is well & perfectly satisfied with his situation, which indeed appears a very eligible one—I think he has a fair prospect before him & have no doubt will succeed.

Hamilton gave us a fine Oration yesterday at St. Paul's church: the Subject would have been peculiarly pleasing to you—it was an Eulogium on General Greene.⁵¹ Your Son was disappointed in it—I confess it had some defects—for an oration, there was too much of the narrative & too little of the declamatory & pathetic—but the Language was classical—the sentiments brilliant & it was delivered with animation. It was indecently partial—not a word of Sumpter⁵² (who was present & not a little displeased), Marion,⁵³ or Colonel Lee⁵⁴ thro' the whole of a long history of the Southern operations—much praise of Col. Washington—Howard⁵⁵ & Campbell⁵⁶—the late General Lee⁵⁷ was in

⁵⁰ Smith was torn between two groups in Charleston, one group wanting a bankruptcy law and another petitioning against such a law. Rogers, *Evolution of a Federalist*, p. 252. Smith consistently represented the views of the larger merchants, including those with British connections, and these men apparently opposed a federal bankruptcy law. Smith did not introduce the bill.

⁵¹ Hamilton's eulogy on Nathanael Greene is printed in *The Papers of Alexander Hamilton*, ed. H. C. Syrett and J. E. Cooke, New York, 1962, V, 345-359.

⁵² Thomas Sumter (1734-1832) was a member of Congress from S. C.

⁵³ Francis Marion (1732-1795).

⁵⁴ Col. Henry ("Light-Horse Harry") Lee (1756-1818), the father of Robert E. Lee, who fought with General Greene.

⁵⁵ Col. William Washington and John Eager Howard (1752-1827). These names, however, do not appear in the above version of the eulogy.

⁵⁶ Of Lt. Col. Richard Campbell, who died at Eutaw Springs, Hamilton spoke as follows: "He like another Epaminondas yielded up his last breath in this noble exclamation. *Then do I die contented.* Heroic Campbell how enviable was such a death!" *The Papers of Alexander Hamilton*, ed. H. C. Syrett and J. C. Cooke, New York, 1962, V, 358.

⁵⁷ Hamilton spoke of General Charles Lee's conduct at the Battle of Monmouth.

plain terms called a Traitor—in speaking of Virginia he attributed her embarrassments during the Campaign to her numerous Slaves, “whom injured humanity taught to detest their masters”—this sentiment might have been very well omitted—Mr. I.⁵⁸ did not like it at all—General Pinckney⁵⁹ exhibited in Charleston, I suppose—I should have been much pleased to have heard him, if his Oration is printed, I wish it may be sent to me—I will endeavour to procure Hamilton’s for you.

The Legislature assemble at Albany tomorrow, for the sole purpose of electing Senators—the Candidates are General Schyler, Duane, Judge Yates—King—the Chancellor—[Judge] Morris—Schyler & Yates have the best prospect of success—many speak of L’Hommedieu as having a good chance.⁶⁰ King is a member of the Legislature from this City—He has been admitted at the Bar here by unanimous consent, against the rules of the Court—& has the Interest of Hamilton on this occasion, but he is too young in the Country in the opinion of a great many.⁶¹

Best respects to Mrs. Rutledge from, my dear Sir, Your’s very affectionately

Wm Smith

New York, August 9, 1789

My Dear Sir,

I feel myself much indebted to you for your observations on the Judicial Bill which have arrived in good time for me to avail myself of them—they in general coincide with my sentiments & I shall use my endeavours to promote the alterations you have suggested.

My time is so much employed & I have so many letters to answer that I am deprived of the pleasure of answering your’s fully & must defer it to another opportunity.

Some of your objections have been in some measure obviated by the Senate who have made considerable alterations in the Bill as you must have observed by the Bill I sent you some weeks ago, as it passed the Senate. It has been the order of the day a fortnight past with us,

⁵⁸ Mr. Izard.

⁵⁹ General Charles Cotesworth Pinckney.

⁶⁰ Major General Philip Schuyler, William Duane, Judge Robert Yates, Rufus King, Chancellor Robert R. Livingston, Judge Richard Morris, and Ezra L’Hommedieu.

⁶¹ Rufus King had just moved from Massachusetts, which state he had represented in the constitutional convention of 1787, to New York which henceforth became his home and political base.

but as we have had various other business we were desirous of terminating before we entered on this, we have postponed it from day to day & probably shall not go upon it for another week.

The Committee on Amendments have reported some, which are thought inoffensive to the federalists & may do some good on the other side; N. Carolina only wants some pretext to come into the Union, & we may afford that pretext by recommending a few amendments.⁶²

There appears to be a disposition in our house to agree to some, which will more effectually secure private rights, without affecting the structure of the Government—I am sorry our opinions differ so widely on the question of removability: had I not formed mine on very mature reflection, I should have had much reason to waver after reading your observations: your experience in politics & the unbiassed state of your judgment, not warped by the warmth of debate as we were, enable you to form a proper opinion upon the subject: I am pleased however to find that your arguments go altogether upon expediency & not upon the *constitutional right*: my desire to guard the Constitution from the dangers of legislative constructions, (which may hereafter be productive of considerable injury to our State, whose representation in point of numbers is weak & unequal to that of any other part of the Union) animated me with a peculiar warmth of opposition. There are men of ingenuity in our house, whose tendency to establish a monarchical government & whose abilities to promote it would go great lengths in altering the constitution essentially were they allowed to give constructive powers to the Executive branch of the government. They acknowledge that the power in question is not explicitly given to the President but they contend that, as it is an Executive power, he must have it of course. It is not difficult to foresee to what this implication may hereafter tend, as there are several powers of an Executive nature not mentioned in the Constitution & not given to any branch, which every one will admit the President ought not to possess.⁶³

Mr. Madison is a great friend to a strong government—his great abilities will always give him much weight with the administration—I believe he now is much in the confidence of the President & he will hereafter stand a chance of being President himself; in the mean time,

⁶² North Carolina at her convention held, July 21-August 4, 1788, had suggested certain amendments to the constitution as her condition for joining the union. *Debates in the Several State Conventions on the adoption of the Federal Constitution*, ed. Jonathan Elliot, Philadelphia, 1836, IV, 242-252. North Carolina did ratify the constitution in November 1789.

⁶³ These arguments foreshadow those used by Alexander Hamilton in his "Pacifcus" letters on the nature of the executive power.

he will be a leading man in the Cabinet Council. His mildness of character & a certain timidity which accompanies his political conduct render him unfriendly to a republican government.

The Massachusetts members were divided—but Ames⁶⁴ & Sedgwick⁶⁵ who expect soon to see Adams President & believe they will then be prime ministers exerted themselves to carry the question: by their influence, Mr. Dalton,⁶⁶ in the Senate, was brought over & made the numbers equal, & the Vice President gave the casting vote.⁶⁷ The influence the great body of the people in Massachusetts have in their state government & the insurrection of Shays co-operate⁶⁸ to make those gentlemen great favorers of monarchy: such being the state of things, it is a question of considerable importance whether the grant of such power will promote the prosperity of our State: I am inclined to think not.

Should Adams obtain the Presidency (& I dare say he will in a few years,) such is the infatuation of the New England States in his favor, that I suspect he will have it for life: His ambition is considerable & his partiality to those States no less so. What chance then will a Southern man have of being appointed to an office? He will nominate his own friends & should the Senate reject them, & compel him to nominate a person disagreeable to himself, he will dismiss the offices so appointed on the first recess of the Senate & supply the Vacancy himself; besides the Senate will be very seldom disposed to reject any nomination made by the President, who having thus the sole power, as it were of appointment to all Offices & the sole power of dismission, will be enabled to establish such a system of influence that his responsibility will be a mere shadow. All the great Officers of government will be his dependants, open-mouthed on all occasions against the Senate, should they ever pretend to differ with the President on any constitutional point, clamorous against any member of the other house, who shall presume to thwart him in any design. These Officers & their friends from one end of the Continent to the other will form a Phalanx, dangerous to any Competitor who may have the folly to be a Candidate for the Presidency; As they would very probably be all dismissed from office to make way for the favorites & creatures of the Successor, their interest would prompt them to use every stratagem to procure the re-election of their Patron & Creator. Every engine would be set to work—abuse of the Compe-

⁶⁴ Fisher Ames of Massachusetts.

⁶⁵ Theodore Sedgwick of Massachusetts.

⁶⁶ Tristram Dalton of Massachusetts.

⁶⁷ Vice President John Adams.

⁶⁸ The insurrection of Daniel Shays in the fall and winter of 1786.

titor—panegyrick of the Gentleman in office, bribery, menaces & cabals would all be employed & would undoubtedly succeed. Every Collector, Naval Officer, & Surveyor from New H. to Georgia, with all their relations & friends will be interested in his re-election.

Contemplate the Subject in another point of view: It is generally thought that another President will never be elected by Electors, because it is supposed that no man in America (except our President) will unite the suffrages of a majority of the Electors: in that case the H. of Representatives are to make the Choice. The New England States united will always carry their point—the Southern States will stand no chance: The Cabal in the H. of Representatives will be interested in supporting the President of their appointment—this is natural—we are ashamed to acknowledge the injudiciousness of our choice & therefore, right or wrong, the Party who have brought about the Election will on all occasions form a strong phalanx in the H. of R. in support of the President—their friends will in return receive all the best offices under the government—it will be always an easy thing to remove the present Incumbents—calumny—detraction—whisperings will be successful—the President will dismiss, & the people will take it for granted, all is right—but admitting that they are dissatisfied—what can be done—impeach the President? for what? for exercising a constitutional prerogative—that would be idle indeed.

This combination being established between this *Monarch* & his *Treasury bench*, the next thing would be to cry down the Senate—alarm the People about Aristocracy, quote the Examples of Denmark & Sweden.⁶⁹ If the Senate don't crouch to the President—all his officers will set themselves to work to undermine its authority & render it despicable—if it is opposed to the H. of Representatives the Treasury Bench will reprobate it for thwarting that house which is the immediate representative of the People—it will be repeated (for it has already been said in Congress) that the H. of Rep. & the President are more nearly related to the People than the Senate—that the Senate are an Aristocratic body, their doors shut, voting for officers in the dark mode of ballot⁷⁰—that there is no responsibility among them—that

⁶⁹ Robert Molesworth's *An Account of Denmark* (1696) which recounted the development of absolutism in Denmark in the seventeenth century, was a primer for all the founding fathers. Sweden was also thought to have succumbed to tyranny in 1772. R. R. Palmer, *The Age of the Democratic Revolution*, Princeton, 1959, I, 99-103, 398-402.

⁷⁰ It is only through William Maclay's diary that very much is known about the work of the Senate during this first year of the new government as the Senate sat with closed doors until February 1794. *Journal of William Maclay*, ed. Edgar S. Maclay, New York, 1890.

they don't represent the People but the States—that the great danger is to be apprehended from that quarter & not from the President, who is the Man of the People (shall we say so of *Adams*?) that they will generally be the opulent men of each State & are therefore to be dreaded. Thus will that useful body be abhorred by the People & lose all its weight in the Government; thus will the Constitutional barrier against the tyrannical incroachments of the Chief Magistrate on the one hand & the intemperate proceedings of the popular branch on the other be pulled down & annihilated, & thus, finally will the whole powers of government be absorbed by the President & his pretorian Cohort in the H. of Representatives—*You will say all this is supposition*—true—let us agree then that in respect to expediency, much may be said on both sides—& proceed to examine the subject on its *constitutional ground*.

It is very evident that the *federal* constitution is a *compilation* of the *State* Constitutions: there are few clauses in it, particularly those which relate to the Structure of the several branches of the Government which are not copied nearly verbatim from the State Constitutions. The mode of appointment to offices by the President with the advice of the Senate is copied from a great number of the Constitutions where the Government & Privy Council or Council of appointments have this power. The Impeachment by the H. of Representatives & the trial of Impeachments by the Senate are also imitated from the Governments of almost all the States—you will admit then that the rule of construction from *analogy* will here strongly apply—the federal Constitution being silent as to removability (unless by Impeachment) the question occurs how are officers to be removed? You say, by the *President*—I then ask, can the *Governor* of any one State in the Union remove an officer at pleasure? He certainly cannot. In one or two states, the Governor & Council appoint another officer, which operates as a superse-dure (if I may so call it) of the person in office, but the *Governor alone*, tho he can in some instances suspend, can in no one instance remove. In some of the States, an officer can be displaced only by impeachment, in others by address of the Legislature, & again in others by the Governor & executive Council.

Examine the new Constitution of Georgia, every clause of which relating to this question, is copied from the federal Constitution & tell me whether you think the Governor of Georgia has this immense Power; I puzzled Mr. Baldwin not a little by asking him this question, immediately after he had made a long oration to prove the constitutionality of this power in the President.⁷¹ Can there be two modes of construction,

⁷¹ Abraham Baldwin had made a long speech on June 19. *Annals*, I, 556-560.

one for the Constitution of a State & the other for the Constitution of the U. S. when the same words & sentences are employed? I think not: Mr. Baldwin was clearly of opinion that the Governor of Georgia has *not* this power.

But you will ask whether the Constitution has vested this power in the Senate joined with the President—the *Implication* is certainly stronger in favor of the Senate, because they appoint, & it seems reasonable that they should remove, for the same judgment is requisite to determine whether one man should be remov'd from an office as to determine whether another is fit to be appointed to it. Besides, the Senate, consisting of members from every State, may be deemed more interested in the continuing in office a proper man, than the President; & as the officer can be a countryman but of two of the Senators there is less reason to apprehend an improper spirit of favoritism & partiality in the Senate than in the President. The Senate may also be supposed to contain more general knowledge of characters than the President—they come from all parts of the Union, mix in Society & know the public sentiments, whereas the President lives recluse & converses only with a few favorites, from whom he will generally derive all his information of characters. Again, as the President & Senate jointly appoint, it appears that if there be any other mode of removal than by impeachment, the proper mode should be to remove the officer by the appointment of another, which must be by the concurrence of the Senate.

Here I will admit that some inconveniencies might result from this doctrine, & therefore I gave in the house a very different interpretation to the Constitution from those who contended on the one hand that the power of amotion belonged to the President alone & those who insisted that it was in the President & Senate jointly: and altho my exposition was only supported by myself & Mr. Page,⁷² yet the friends to the former opinion confessed that mine was more consistent & more constitutional than the latter. Without adverting to *expediency*, but confining myself strictly to the Constitution, I contended that Officers could only be removed by Impeachment: I supported my opinion on these grounds: 1st the Constit. says, "all officers shall be removed by impeachment" & in no part of the Constitution does it say that they shall be removed in any other mode expressed unius est exclusio alterius. 2dly this is conformable to the State Constitutions for no officer can be displaced in any of the States, unless by Impeachment or by virtue of a power *expressly* given to the Executive Council or the Legislature, as in Pennsylvania & Maryland; in the latter the Treasurers hold their places during

⁷² John Page of Virginia.

the pleasure of the Assembly. 3dly the mode of removal must be uniform; if it be given to the President in one case it must be given in every other, & the Convention could never have had in contemplation that the Treasury should be so much under the immediate influence of the President as it would be if the officers of that Department held their places during his pleasure.⁷³ 4ly the Enumeration of the Powers of the President in the Constitution is a direct & strong implication that he should have no other powers than those enumerated, because, if vesting him with the Executive power was of itself sufficient to convey all executive powers, the enumeration would be absurd. The same observation applies to the Senate. Had this power been in contemplation, how easy would it have been to have added, after declaring that the President should nominate & by & with the advice & consent of the Senate appoint, these words, "& remove, when necessary," all officers &c. or after saying that the President should "commission all officers" add, "*during his pleasure*": from the comparison with the State Constitutions & the omission of any such power, I am perfectly convinced either that there were in the Convention men who wished this power should be vested in the President, but were afraid to give it explicitly, lest the people should reject the Constitution & therefore left it to be exercised by implication, or that it was never in the contemplation of the Convention: I have indeed heard it said that it was then understood that the President & Senate would appoint a new officer & thus supersede the old one.

Aug. 10th. It is very certain that had the power been agitated in Convention & there understood to be in the President alone, we should have been told it in the debate. For these & other reasons which I have not leisure to detail I am of opinion that constitutionally an officer can only be removed by Impeachment—to this, it was answered that the most alarming inconveniencies would result from such a doctrine, because even a tide-waiter would be removed only by Impeachment which would be absurd, & that it would be dangerous to liberty to give to the officers of government so durable a tenure as that of good behaviour & that moreover it was against the Constitution which only contemplated such a tenure as applicable to the Judges.

I rescued my principle from these defects by stating: 1st that my doctrine would not extend to a tide-waiter, because Congress would by Law vest the appointment & consequently the removal of all in-

⁷³ The secretary of the treasury was considered on a different footing from the secretaries of state and of war in that he was required to make annual reports to Congress.

ferior officers in the President alone. 2. that it was easy to limit the duration of the great officers by making their appointments biennial or for a longer period as is done in all the States which the Congress might do, when they established the offices. 3. that the Constitution by declaring that the Judges should hold their places during good behaviour intended to prohibit Congress when it instituted the Judicial Department from making their appointments limited, as they are in several of the States, to a term of years & manifestly shewed that the Executive officers might be limited: my conclusion therefore was that with respect to all inferior officers a Law should pass vesting the appointment & removal solely in the President & that the great & principal Officers of government should be appointed for a limited time, during which they should only be removed by impeachment. If you read the constitution with attention & compare it with that of the States, you will be of opinion with me that however expediency may dictate another principle, this is the constitutional line of proceeding.⁷⁴

I observed some time ago that our State should be extremely cautious how any innovation is made in the Constitution⁷⁵—at present we know what government we live under & the Extent of the Sacrifice made—our State Convention perused the federal constitution & concurred in it, as it stood. While it remains unaltered, we may have no reason to apprehend any incroachments on our State-rights—but if on the other hand, it is in the power of a few ingenious men & able orators to new-model the powers of the government by construction & implication & give it a different shape from the one it had when we adopted it, there's no saying to what lengths these alterations may be gradually carried in time.

I observed that our State is weak in the Union—it certainly is—we have no state to support our peculiar rights, particularly that of holding Slavery, but Georgia:⁷⁶ She will be generally represented by men of moderate abilities—indeed I fear the smallness of the pay will not entice our best men to make the necessary sacrifices & come to Congress: No. Carolina voted with the other states against us in Convention: Virginia is our greatest enemy, the other States are all against us; but while the Constitution remains unaltered, they can't touch our negroes for 20 years & perhaps not constitutionally after that time; I

⁷⁴ Smith, who became an authority on constitutional questions, published in Philadelphia in 1796 *A Comparative View of the Constitutions of the Several States with each other, and with that of the United States*. . . .

⁷⁵ A new constitution was written for South Carolina in 1790.

⁷⁶ Georgia and South Carolina had stood together in the convention of 1787 in defense of slavery.

shall support the Amendments proposed to the Constitution that any exception to the powers of Congress shall not be so construed as to give it any powers not *expressly* given, & the enumeration of certain rights shall not be so construed as to deny others retained by the people—and the powers not delegated by this Constitution nor prohibited by it to the States, are reserved to the States respectively; if these amendments are adopted, they will go a great way in preventing Congress from interfering with our negroes after 20 years or prohibiting the importation of them. Otherwise, they may even within the 20 years by a strained construction of some power embarrass us very much. I had this in contemplation not a little, in my opposition to the Legislature's giving judicial constructions on the Constitution.⁷⁷

I have read your observations on the Judicial with attention & having somewhat more time than I thought I should have had at the outset of this Letter will briefly acquaint you what impression they have made on my mind.

1st. Objection to the District Judge holding special Courts.

Answer. Occasions may occur when they may be very necessary—the Seizure of goods—a Ship—which it may be proper & expedient to condemn forthwith—a crime committed on the High Seas—and the witnesses, who are Sailors, about to depart—you recollect that the District Court is a Court of Admiralty—The Judge will not hold them unnecessarily on account of the additional trouble—Great inconveniences might ensue, if he had not that power—if it is found oppressive, the Legislature can remedy it. The District Court has no material Jurisdiction beyond maritime causes & causes of Seizure; therefore the dangers cannot result which you apprehend. Nor can there be apprehensions from the Judge's power to hold the Court where he thinks proper for the above reasons—On the mode of adjourning the court when the District Judge does not attend, I entirely agree with you & had made a note similar to yours before I saw your observation.

The Senate have altered the Clause respecting Quakers, [presumably] to your Sentiments.

The Trial of *fact* shall be by Jury.

As the Bill has been alter'd by the Senate, it stands now “the *trial of issues in fact*” shall be &c. In general the Law as well as the fact should be left to the Jury—but when we consider that the causes triable in these Courts will generally turn on the Laws of nations, the construction of Treaties, on the clashing rights of different states, on

⁷⁷ This is an argument from the tenth amendment which was then being discussed in Congress.

the interests of foreigners, against whom that order of people of whom our Juries are formed is generally prejudiced, on the interest of citizens of another state than that in which the cause is tried, in which case the Jury will be partial to their own immediate fellow-citizens & perhaps acquaintances, a question may arise (& I confess my opinion is not settled) how far the Senate have not been judicious in leaving the Fact alone to the Jury, more especially, as there is no appeal of fact to the Supreme Court but only of Law.

Restrospect as to Contracts: I have sometime since sounded the members on this point but they generally disapprove of the restriction: less danger will result from a general operation of the Law than might have been apprehended; the establishment of Circuit Courts will facilitate the trial of causes in the States where the debts may be due & by Juries of those states; & there is no appeal of fact—the Sum for which Writs of Error will lie to [*torn*] Court may be a large one.

If the Defendant claims under a Grant of another State:

Your objection is that the Plaintiff should have the same right: The alteration has been made in the Senate, conforming to your opinion.

Suits against Ambassadors—the United States not to pay costs.

I agree with you in your observations on these two points.

Where is drawn in question the Validity of a Treaty &c. you think the appeal should be reciprocal—I have seen some observations from Mr. Pendleton⁷⁸ of Virginia on the Jud. Bill & he makes precisely the same objection. The reason on which the Clause is grounded is that a citizen can't complain if his own State Court decides against him; that this Bill does not put him in that respect in a worse plight, than he was before: on the other hand the Clause is absolutely necessary for the preservation of the federal government—there is much weight in your observation & I am not clear but you are right: my opinion is not fixed.

Mr. Elsworth who was principally concerned in drawing the Bill is a Judge of the State of Connecticut of much reputation for legal knowledge: he is a man of remarkable clearness of reasoning & generally esteemed a person of abilities. I met him last night & took notice of some of your objections which he endeavoured to refute. He observed that the convention had in view the condition of foreigners when they framed the Judicial of the U. States. The Citizens were already protected by [*torn*] Judges & Courts, but foreigners were not. The Laws of nations & Treaties were too much disregarded in the several States—Juries were too apt to be biased against them, in favor of their own

⁷⁸ Edmund Pendleton.

citizens & acquaintances: it was therefore necessary to have general Courts for causes in which foreigners were parties or citizens of different States; hence arises this partiality which offends you: perhaps it may be carried too far.

The mode of drawing Jurors should be according to the customs & Laws of the several States: Mr. Elsworth seemed to have no objection to that, but remarked that a very ignorant Jury might be drawn by Ballot.

Special Jury in appeals to the Supreme Court:

There is no appeal of fact to the Sup: Court.

The Return Days ought to be fixed in the Act:

I will mention this—I have not much considered this point.

I shall do every thing to serve Capt. Hall,⁷⁹ when an opportunity offers. At present there is nothing that will suit him.

I sent you the Judicial Bill as it passed the Senate—if you have leisure, send me your opinion of it, which may arrive before we pass it.

I dined in company with Henry yesterday—he looks [well &] likes his Situation much.

[This will be] delivered you by Mr. John Marsden Pintard, who has a Law Suit in Charleston. Mr. Boudinot, his uncle has requested me to recommend him to a Lawyer of Eminence; I therefore take this mode of introducing him to you: he is a gentleman of good connexions in this City.

I have much more to say, but no more time—Mrs. Smith joins me in best regards to your good Lady & yourself & I am particularly, My dear Sir, Yours with sincerity.

WM. SMITH.

[P. S.] Mr. Pintard has altered his intention & does not go to Charleston.

August 15th. Ramsay is arrived here—When I went to Congress this morning, I saw him going from the door: I haven't yet heard whether this is solely a visit of Curiosity—I imagined he went to Philadelphia to print his book.⁸⁰

⁷⁹ Capt. Thomas Hall was later appointed clerk of the federal district and circuit courts in South Carolina. Rogers, *Evolution of a Federalist*, p. 183.

⁸⁰ R. Aitken & Son of Philadelphia published Ramsay's *History of the American Revolution* in October 1789. Ramsay to John Eliot, October 19, 1789, "David Ramsay, 1749-1815, Selections from his Writings," ed. Robert L. Brunhouse, *Transactions of the American Philosophical Society*, new series, LV (1965), 126.

We have been these three days on Amendments—a motion of Tucker's⁸¹ this morning respecting the right of the people to *instruct* their representatives occasioned some warmth [*torn*] rudeness of Mr. Gerry,⁸² & some reflexions of Burke's⁸³ [on the] Committee who brought in the Amendments & particularly on Madison: he said these Amendments were a mere *tub to the whale* & similar observations which were taken up warmly by Madison & others: Tucker's motion was voted for by 8 or 9 antifederals—It is worthy of observation that the antifederals in our House have thrown difficulties in the way of these Amendments merely because they can't carry alterations which would overturn the Government—there has been more ill-humour & rudeness displayed today than has existed since the meeting of Congress—allowing to Gerry & one or two more—& to make it worse, the weather is intensely hot.

Henry dined with me today & is just gone—he grows a fine youth—genteel in his manners & well-bred.

Philadelphia, October 6, 1789.

My dear Sir,

Congress adjourned on the 29th last month & two days after Mrs. Smith & myself sat off for this place. We came from New York to Elizabeth Town by water & the rest of the way we travelled leisurely with our own horses & got here in two days—on our passage to Elizabeth Town we met with a great alarm owing to a violent head-wind which, in a sudden squall, had very nearly upset the Boat; however, no other mischief was done than frightening us all very much, except the loss of a hat to one of our fellow passengers, who bemoaned his misfortune in the most deplorable terms; he assured us that it was a brand new hat which he had just paid 30/ for & moreover that it was a *fur* hat—"yes," said I to him, "it is *fur* enough by this time, for you'll never see it again—& if it is any consolation to you, I lost just such a one crossing from Dover to Calais some years ago." Vining, (who was with us & relishes a *bad pun* mightily,) broke out in a loud-horse laugh & put an end to our bare headed passenger's lamentations.

⁸¹ Thomas Tudor Tucker of South Carolina. Rogers, *Evolution of a Federalist*, pp. 175-176.

⁸² Elbridge Gerry of Massachusetts.

⁸³ Aedanus Burke of South Carolina.

Yesterday I took my Seat in the Convention,⁸⁴ where I have now the Honor of representing the Laity of S. Carolina being the only Layman from our state: we vote by States & no vote can pass unless the Laity concur. Several questions have been [*torn*] by the Laity's negative, altho the Clergy [were] pretty unanimous. In general the two orders don't perfectly agree—Yesterday we had much debate on the new form of Liturgy & to day was spent in discussing the propriety of inserting in the Creed that *J. Christ decended into Hell*: the Clergy all voted for it & nearly all the Laity against it, consequently the motion for inserting those words was lost. It was matter of great triumph to us that the reverend gentlemen could not agree among themselves what was the meaning of the words, some contending that he actually went to the place of the damned, vulgarly called *Hell*, others that he only went to the *place of departed spirits* & others again that he only went to his grave—finally we made a compromise & agreed that the Minister may use either words, viz; that *he decended into Hell* or *into the place of departed Spirits*.

The Lay Deputies who are most conspicuous are Mr. Hopkinson⁸⁵ & Tench Coxe of this place & Mr. Andrews of Virginia.⁸⁶ Dr. Smith⁸⁷ of this State is President & a very bad one, for he is perpetually interrupting the members & mingling in the Debate—indeed I observe that all the Gentlemen in orders are always out of order: I have already picked up a vast deal of theological knowledge & shall become a great disputant.

We shall stay here about a week longer.

I am glad to hear such favorable accounts of the Crops.

Farewell, my dear Sir—in haste—Your affectionately hum. Servant.

WM. SMITH.

[P. S.] Strong⁸⁸ sails tomorrow—I would not lose the opportunity tho much-hurried.

⁸⁴ No. 23 of Volume XIV of the Smith Pamphlets in the Charleston Library Society, Charleston, S. C., is a copy of the "Journal of a Convention of the Protestant Episcopal Church . . . held in Christ-Church, in the city of Philadelphia, from July 28th to August 8th, 1789." The convention must have resumed its meeting, the second half of which Smith attended according to this letter.

⁸⁵ Francis Hopkinson of Pennsylvania was the secretary of the convention.

⁸⁶ John Andrews.

⁸⁷ Dr. William Smith.

⁸⁸ Capt. Strong sailed regularly in his ship *Philadelphia* between that northern city and Charleston.

SOUTH CAROLINA'S COMPLIANCE WITH THE MILITIA ACT OF 1792

JEAN MARTIN FLYNN *

When the Federal Convention met in 1787, the delegates faced the problem of how to defend the new nation. Should Americans rely upon a standing army? Should they rely upon militia?

The use of citizen soldiers dated back to the early days of colonization. In Carolina, for example, the Proprietors made every man a soldier regardless of birthplace, job, or social class.¹ When King George I took the settlement under royal protection, he ordered Francis Nicholson, his captain-general and commander-in-chief, to take care that "all Planters, Inhabitants and Christian Servants be well and fitly provided with Arms and listed under good officers."²

In turn, one of the first acts of John Rutledge, president of South Carolina in 1776, was to urge the General Assembly to pass a militia law.³ But during the war with England, Washington and other military leaders learned that regular troops won victories, not undisciplined militia commanded by untrained officers.

Even so, the Federal Convention proposed a militia of the States. Congress would make laws to organize, arm, discipline, and govern soldiers called into the service of the United States. But the right to name the officers of those troops and all other authority over them remained with the states.

The Federal Convention relied upon the militia for two reasons: there was no money to support a standing army and Americans feared one. So strong was the fear that at the Convention, George Mason of Gunston Hall, Fairfax County, Virginia, wanted to preface one section of the plan with the words: "And that the liberties of the people may be better secured against the danger of standing armies in time of peace." James Madison, Jr., delegate from Virginia who would become fourth President of the United States, favored the proposal stating that

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¹ *The Statutes at Large of South Carolina*, ed. Thomas Cooper and David J. McCord, Columbia, S. C., 1837-1841, I, 29. (Hereafter *Statutes at Large*.)

² William James Rivers, *A Chapter in the Early History of South Carolina*, Charleston, 1874, p. 82.

³ *Journal of the General Assembly of South Carolina—September 17, 1776 to October 20, 1776*, ed. A. S. Salley, Jr., Columbia, 1909, p. 9.