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Samuel Chase's "Objections to the Federal Government"

JAMES A. HAW

MANY CONTEMPORARIES AND MOST HISTORIANS HAVE ASCRIBED SAMUEL Chase's Antifederalism primarily or exclusively to motives of self-interest. Philip A. Crowl concluded that the Maryland leader's opposition to the Constitution "can probably be explained by the heavy personal financial reverses he was experiencing at this time." Lacking the means to finance his heavy speculation in confiscated British property, Chase by 1785 faced the prospect of bankruptcy. His plight caused him to lead an unsuccessful movement for paper money and debt relief in the Maryland legislature from 1785 into 1787. The Constitution, by prohibiting state issues of paper money, would foreclose his dimming prospects of recovery.¹

Other historians have generally accepted this thesis, in substance if not always in detail,² and indeed Chase's personal problems and his experience in the paper money contest were important factors in determining his stand on the Constitution. It is not true, though, as has recently been suggested, that "Chase never did undertake a thorough critique of the Constitution," and the view that his "real objections were personal, not philosophical"³ needs qualification. Both personal interest and political philosophy led Samuel Chase to Antifederalism.

Chase's analysis of the Constitution was set forth in greatest detail in his "Objections to the Federal Government." Apparently a set of notes for a speech during the ratification campaign, this document was designed to impress a deliberative body rather than to sway a popular audience. Chase made two speeches against the Constitution that would fit the description, one in the Maryland House of Delegates in November 1787 and the other at the state ratifying convention on April 24, 1788.⁴ Because the sources cited in the document appeared as late as March 1788, Chase's notes could only have been meant for the latter occasion.

Chase's "Objections" reveals that he was well acquainted with the debate over the Constitution beyond as well as within his home state. His arguments paralleled those of many other Antifederalists, shedding light not only on his own views but also on the nature of Antifederalism in general.

Beyond the typical Antifederal belief that republicanism could exist only in a small state and the consequent preference for a league of sovereign states, Chase

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placed particular emphasis on three arguments. First, Congress consisted of so few representatives that the interests of the "middling sort" would not truly be represented. "The station is too high and elevated to be filled but by the *first men* in the state in point of fortune and influence." The Constitution thus paved the way for aristocratic domination of the new government.

This argument paralleled Chase's charge during the paper money controversy that an irresponsible aristocracy of wealth and power, entrenched in the state Senate, had denied the majority's call for an emission and disregarded the general welfare to protect their own financial interests. After the Senate defeated paper money, Chase in 1788 was more wary of placing too much power in the hands of an elite than at most other periods of his life. His perception that the Constitution was designed to secure the election to national office of society's wealthy and prominent "natural" leaders was shared by many other Antifederalists—and, as Gordon S. Wood has argued, by Federalists as well.⁵ While Chase advocated the political leadership of a natural aristocracy open to talent, he also insisted throughout his career that that leadership must ultimately be responsible to their constituents and must act for the public good. Essentially conservative in his political philosophy, Chase turned apparent radical on those occasions when he believed that the governing elite was acting selfishly or irresponsibly.⁶ Coming on the heels of the paper money controversy, Chase's cry of "aristocratic danger" against the Constitution reflected one side of his consistent political philosophy as well as immediate self-interest.

If in fact an aristocracy of wealth and status would dominate the central government with no more than a nominal representation of the "middling sort," it followed in Chase's view that liberty was in danger. His second major objection to the Constitution was that the national government would "annihilate the State Governments," particularly by making use of its virtually unlimited power of taxation to monopolize the sources of revenue. Third, Chase insisted that the Constitution did not protect individual rights and civil liberties, and undermined the ability of the states to do so.

Chase's "Objections to the Federal Government" suffers from the fact that it is a series of rough notes rather than a polished document intended for publication. Nevertheless, in content if not in form, it deserves to be ranked with the more impressive pieces of Antifederalist analysis.

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Samuel Chase Esq.

Objections to the Federal Government.

- Papers. 1. As to characters of Convention.
 2. As to no government if new are not adopted. See Oswald Independent Gazetteer Nov. 14. Brutus Junr.⁷
 3. Trial by Jury. Democratic Federalist.⁸

4. Bill of Rights. Old Whig 4 and 5.⁹
5. Trial by Jury. *Columbian Patriot*.¹⁰
6. Objections answered by Aratus.¹¹

Authority of Delegates to Convention.

1. Act of appointment.

No authority from legislature to annihilate Confederation and form a constitution for the United States. Legislature could not grant such power. Deputies acted as mere individuals and not in official or delegated capacity. Express object of delegates to revise confederacy.

Act done—a general or national government is formed—the separate sovereignty and independence of each state, and their union by a confederate league is destroyed and they are melted down and consolidated into one national government. In confederation—We the States—in proposed constitution—We the people—the first is a true federal government of states and has no power over the individual citizens of any of the states—the latter a national one by express compact of all the people; it establishes a supreme power over the individuals of the states. It annuls the confederacy. See Art. 13.¹²

It swallows up the state governments and states legislatures—it alters our constitution and annuls our Bill of Rights in many of its most essential parts—How justify this Convention on the principles of Aristides—people no right to interfere, etc. Aristides p. 9. Amendment in parliamentary language means striking out the whole. Convention has only advised—and so might an individual.¹³ Wilson—Convention did not act upon the powers given them by the States but they proceeded upon original principles. *Independent Gazetteer*, 29. Nov.¹⁴

McKean.—State convention no right to inquire into power of late convention, or to alter or amend their work. Sole question whether to ratify or reject the whole system.¹⁵ Could convention lessen the rights of the people? their right to lessen never surrendered to convention. People must have a right to judge of the government proposed. No man can controvert the right of proposing amendments. Whether proper and necessary the only question. Aristides 30.¹⁶

1st. Question. Whether a federal or national government proper for America. S. C. [i.e., Samuel Chase]¹⁷ for the former. Because an extensive country (like United States) on democratical principles only by a confederation of small republics exercising all the powers of internal government, but united by league as to their external foreign concerns.—A national or general government however constructed over so extensive a country as America must end in despotism.—If instituted on principles of freedom, not competent to the local wants and concerns of the remote parts of the empire. Montesquieu vol. i. ch. 16. Brutus No. 1. Cato No. 3.¹⁸

2nd Question—If national whether the one proposed ought to be ratified without any previous amendments. 1. The question is the most important that ever came before an assembly for decision. It involves the happiness or misery of millions yet unborn. The decision requires all the consideration that the utmost exertion of the powers of the mind can bestow.

The present and future generations will bless or execrate us. We [are] at a solemn crisis—and the magnitude of the subject requires that it should be deliberately considered and fully considered with temper and moderation.—

1. People will not choose representatives.
2. Congress to alter place!
Senate—never heard of the resolve of Senate. Resolves of Senate adopted before those of House of Delegates. 3d Wednesday of January—Election. 1st Monday in March—proposed an earlier day of meeting.¹⁹

Representation.

1. A fact—the continent will be governed by 65. Six northern states—35—seven southern states—30.
2. I do not object that the states have not an equal representation in the second branch or House of Representatives.
3. I object because the representatives will not be the representatives of the people at large but really of a few rich men in each state.

A representative should be the image of those he represents. He should know their sentiments and their wants and desires—he should possess their feelings—he should be governed by their interests with which his own should be inseparably connected. The representatives of so extensive a country—consequently such numbers should be numerous.—A few men cannot possibly represent the opinions, wishes and interests of great numbers. It is impossible for a few men to be acquainted with the sentiments and interests of the United States, which contains many different classes or orders of people—Merchants, farmers, planters, mechanics and gentry or wealthy men. To form a proper and true representation each order ought to have an opportunity of choosing from each a person as their representative; this is impossible from the smallness of the number—65. Can six men be found in Maryland who understand the interests of the several orders of men in this state and are acquainted with their situation, wants and would act with a proper sense and zeal to promote their prosperity. If such could be found will they be chosen by the people? No—but few of the merchants and those only of the opulent and ambitious will stand any chance. The great body of farmers and planters cannot expect any of their order—the station is too elevated for them to aspire to—the distance between the people and their representatives will be so very great that there is no probability of a farmer or planter being chosen.—Mechanics of every branch will be excluded by a general voice from a seat—only the gentry, the rich and well born will be elected. Wealth creates power—the wealthy always have a number of dependants—they always favor each other—it is their interest to combine and they will consequently always unite their efforts to procure those of their own order or rank to be elected and they will generally succeed. The station is too high and elevated to be filled but by the first men in the state in point of fortune and influence. In fact no order or class of the people will be represented in the House of Representatives—called the Democratic branch—but the rich and wealthy. They will be ignorant of the sentiments of the middling [and much more of the lower] class of citizens, strangers to their ability, unacquainted with their wants, difficulties and distress and need of sympathy and fellow feeling.

4. The numbers are too few. It is to consist at first of 65—and cannot exceed 1 for 30,000 inhabitants—whites and 3/5 slaves—a majority, a quorum 33—ergo 17 may make a law—liable to bribery and corruption. G.B. and F. [i.e. Great Britain and France] will endeavor to obtain an influence to procure treaties of

commerce, and alliances offensive and defensive—they will practice means—Holland is a proof.

This objection applies to the Senate—at first 26—14 a majority 8 may make law—liable to same bribery and corruption. Madness to vest 25 men with absolute power—no free people ever reposed power in so small a number. The Executive will corrupt them—they are not excluded from office.

The last House of Commons above 500 members. Number of inhabitants about 8 millions—1 for little above 14,000—The members in the Democratic branches in 13 States amount to 2,000. The numbers should be too great to be corrupted and not so great as to be a mob.

5. The House of Representatives will not be chosen by the people. Art. 1, Sect 2.²⁰

Maryland is to choose 6 representatives—every person qualified to elect members of our House of Delegates is to be entitled to vote. Our legislature is to prescribe the time, place and manner of electing representatives. Art. 1. Sect Aristides 9. Either the people at large of the whole state must choose the six representatives, or the state must be divided into six Districts for each to elect one man.²¹—Say 2 on Eastern and 4 on Western Shore.

If the whole people choose they will meet in their counties on the same day, this is proposed by some—consider such an election.

If in districts the inconvenience—and the last who vote will elect—and choice like as if all chose. Suppose our delegates chosen in this manner. On the whole I am convinced, 1st That the representatives will be merely nominal from the persons and the numbers elected; 2nd That the right of electing is nugatory and cannot be effectually exercised—it is only a fallacious participation by the people at large in the national legislature.

6. There is no security even for this nugatory right.

7. I have said the Senate are too few in number.

8. The Senate are a perpetual body and never die a civil death (as in this State) although 1/3 is to be chosen every second year, because after the first six years there will always be 2/3 of the body in existence—1/3 of which 2/3 will always have served 2 years; and the other 1/3 will have served 4 years and after the first rotation every Senator may serve six years. The body is permanent—will act by system—1/3 at end of every second year may be different men if legislature pleases.

9. In classing, the Senator who pleases will not be put in the class to go out before six years. Vide Boston Debates. 73.²²

[The following sentence at the head of one of the papers is struck out;—I have long since determined that I would not accept a seat in convention unless gentlemen whose political principles I approved would offer their services to the people.] I am a friend to our present state government because it is wisely calculated to secure all the civil and religious rights of the people and fully adequate for all internal state purposes, and our state constitution and laws afford security to property and ample protection to the poor from abuse by the officers of our state government and from any oppression of the poor by the rich and powerful. There is no injury for which our present laws do not provide a remedy.—There are some few, and not very capital, defects in our form of government

and they may at any time be amended with prudence and sense without any division or commotion—in a word; We might be happy under our present state government, if we knew our own good, and would be contented. I am opposed—averse from the proposed national government, because it immediately takes away the power from our state legislature to protect the personal liberty of the citizen, and I am convinced in my judgment that it will in a few years entirely absorb and swallow up the state legislature.

Our Bill of Rights which is part of our constitution provides—Sec. 2. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof.

Sect. 3. That the inhabitants are entitled to the Trial by Jury according to the course of common law, not only in criminal cases but in all cases between government and its officers—cause etc.

Sect. 17. Every freeman for any injury to person or property ought to have remedy by the law of the land.

Sect 18. Trial of facts where they arise is one of the greatest securities of the lives, liberties and estate of the people.

Sect. 23. All warrants without oath to search, etc.

Sect. 13. Laying taxes by the poll is grievous and oppressive and ought to be abolished.

Sect. 25. Militia proper and natural defence of a free government.

Sect. 26. Standing armies.—27.—28. No soldier to be quartered in any house in time of peace without the consent of the owner, and time of war in such manner only as the legislature shall direct.

Sect. 38. The liberty of the press ought to be inviolably preserved.

Section 33. Securing religious rights of conscience.

By our present form of government, the legislature is not supreme but bound by the constitution.²³

The National Government will in its operation and effects annihilate the State Governments.

1. National Government has unlimited power, legislative, executive and judicial, as to every object to which it extends by the Constitution.
2. The powers of the National legislature extend to every case of the least consequence—it may make laws to affect the lives, liberty and property of every citizen in America, nor can the Constitution of any State prevent the Execution of any power given to the National legislature.
3. The National legislature may impose every species of taxes external and internal (except only on exports) excises, land tax, poll tax, stamps etc. to any extent, and may raise and collect them as they please, without any previous requisition to the state legislatures who have nothing to say to the laws for imposing or collecting taxes.
4. The power to impose and collect taxes is the most important of all powers a people can grant—it absorbs all other powers. Maxim—Money finds Men (Troops) and Troops will find money—The power of taxation is the highest object of legislation—it is the necessary means of protection and safety to the people in a good government and it ever has been and will be the instrument of oppression and tyranny in a bad government.

5. No state can emit paper money—nor without consent of Congress lay any duties on Imports or Exports or Tonnage except for executing its inspection laws, and in such cases the net produce is for the use of the United States—Therefore no state can pay its debts—or support its government but only by direct taxes on property—Congress can lay all indirect taxes, and also direct taxes when they exercise this power in all its extent. The state legislatures will find it impossible to raise money by direct taxes to pay their debts and support their governments—the consequence is certain—without money they will be as Congress is now; without power, or respect and despised. They will sink to nothing, and be absorbed in the general government. The people will not bear the expense of two governments. The state governments may come in for some time to carry into execution the National Government—even this may be taken away. Art. 1. Sect. 4. See Aristides 37. Impost 38. Farmer's Letters 9. p. 37.²⁴ Will impost pay interest of national foreign and domestic debt and expenses of new government?
6. The power of the national legislature to raise troops in peace (as well as war) without any limitation as to number, or with consent of more than a majority in Congress (I say not less than 9 of 13 and in same proportion) or a majority of the state legislatures and to levy money for their support for two years—to control the militia will also [?tend] to swallow up the state governments.
7. The supreme and inferior federal courts will have the same effect by absorbing the state courts—One must be in each state.
8. The power to make laws [Art. 1. Sect. 8.]—e.g. The state lays a direct tax to pay its debts or to support its government. Congress thinks proper to lay tax on same property and as both cannot be paid cannot Congress repeal the state law, or will not their judges declare it void. Will not this conduct deprive the state of all support?
9. [8. repeated in orig.] The little power reserved to the states will be an object of jealousy to Congress. The whole constitution breathes a jealousy of the states—its judges and juries. Truth confirmed by experience of ages that every individual, and all bodies of men invested with power, always attempt to increase it, and never part with any of it but by force. It is the very nature of Man. The national government will possess this desire and having the means it will in time carry it into execution. I think the people themselves will assess and may be persuaded to call for the abolition of the state governments. It is at this moment the wish of many men in America and some in this state.

Liberty of Conscience—Old Whig No. 5—4. Brutus No. 2.²⁵

Bill or Declaration of Rights.

Liberty of Press.

1. The constitution gives no power to Congress *express* or *implied* to abridge or take away the liberty of the press.
2. Art. 1. Sect. 8. Congress have power to promote Science and it is impossible to promote Science and at same time destroy the liberty of the press—under this clause may write what they please about government. There is no Bill or Declaration of rights to restrain Congress. They will have the power and it remains in their discretion when they will exercise it.

Expenses of National government.

Civil List—President—vice-president—Senators—Representatives. Ambassa-

dors—Judicial Department—Judges, Justices, ?Chancellor, Clerks, Sheriffs, Excise officers—naval officers—Locusts—Policy to institute a number of lucrative new offices to increase their influence in the States—Army will provide for many expectants.

I am opposed to the new government.—

1. Because it gives Congress a power without any limitation to lay any kind of taxes that the invention of Man can suggest—indirect and direct. I particularly object to the power to lay taxes on our lands without any limitation and according to our numbers including $\frac{3}{5}$ of our slaves. Also to an Excise and the power to excise officers to enter and search and no remedy by such in state courts—and verdict by a Jury; as under the British government. Clayton's Rep. 44. Woman's shift.²⁶ Also to a poll tax which Congress is expressly authorized—Art. 1. Sect. 9.—to lay on all our whites and $\frac{3}{5}$ of our slaves—the most fatal and oppressive of all taxes. N. B. A favorite tax with Congress and R. M. [i.e. Robt. Morris]
2. Because Congress will have a right to keep an army in time of peace without number.
3. Because Congress will have a right to quarter soldiers in our private houses, not only in time of war, but also in time of peace. Bill of Rights 28.²⁷
4. Because Congress will have authority over our Militia, and may if they please, march any of them without regard to scruples of conscience against bearing arms, to any part of the United States.
5. Because the inferior federal courts will have the exclusive jurisdiction—Art. 3. Sect. 2. of every controversy between the citizens of the different states—and no trial by Jury. Blackstone 3. c. 33.²⁸
6. Because these courts will have the same jurisdiction in controversies between our citizens and subjects of Great Britain or any other foreign state—Tobacco shipped. N. B. an appeal in both cases.
7. Because the Senators or Representatives may be appointed to civil offices under the United States not created or the emoluments increased during the time for which he was elected.
8. Because Congress are to ascertain their own salaries. Art. 1. Sect. 6.
9. Because the Senate are too few in number—only two from each state. 26 at present—a majority, a quorum. 14—ergo 8 may make a law—liable to corruption—[?by] France, Great Britain.
10. Because the Senate are a perpetual body and never die a civil death, although $\frac{1}{3}$ is to be chosen every second year—because after first six years there will always be $\frac{2}{3}$ of the body in existence— $\frac{1}{3}$ of which $\frac{2}{3}$ will always have served two years and other four years and after first rotation every senator may serve 6 years.
11. Because $\frac{2}{3}$ of the Senate present and the president may make treaties of commerce, and the treaties are to be the supreme laws of the land.
12. Because the Representatives are too few in number—1 for 30,000—whites and $\frac{3}{5}$ slaves—65 at present—a majority, a quorum 33.—ergo 17 may make a law—liable to corruption.
13. The House of Representatives will not be chosen by the people. Art. 1. Sect. 2.

Maryland is to choose 6 representatives—Every person qualified to elect

members to our House of Delegates to be entitled to vote—our legislature is to prescribe the time, place and manner of electing representatives. Art. 1 Sect. 4.—Either the people at large of the whole state must choose the six representatives—or the state must be divided into six districts—say 2 on Eastern and 4 on Western Shore.

14. Because Congress may alter the time, place and manner choosing representatives. Art. 1. Sect. 4. proceedings Boston 47.
51. (?60)²⁹
15. Because Congress may alter the time and manner of choosing Senators—the place where is not to be altered.
N. B. Treaties supreme law. Sect. 6.³⁰
See Aristides p. 11.³¹
Massachusetts propose to restrict this power to cases expressed.³²
16. Because the president will not be chosen by people immediately—that is by electors chosen by the people—as pretended. Art. 2. Sect. 2.³³ The legislature are to direct who are to be Electors, but the number is fixed to be equal to the whole number of Senators & representatives—e.g. in this state 8—in all 91. Congress are to determine the time of choosing electors and the day on which they shall elect the president which shall be the same day in all the states.
The electors are to choose by ballot two persons. The person having a majority of all the electors to be president and if no person has a majority—which is most improbable, except in first instance then from the five highest on the list the House of Representatives to choose the president—each State to have a vote.
17. Because the powers of the President are dangerous. Power of nominating to office. Of pardoning before conviction.
18. Because he is eligible for life and he ought to be ineligible after a given number of years.
19. Because the Judicial power extends to controversies between citizens of different states and between citizens of the states and subjects of foreign states and in such cases the trial by Jury is taken away.
20. It is said by the advocates for the new government that we are without a government. Ans. They mean a general or national government—not a state government. The former is wanted to make the states do their duty, and pay their quota to discharge the debt contracted during the war—and to protect the states against the powers of Europe (There is power to decide differences between the states in the Federal Congress) and to regulate trade. If admitted—yet no necessity much less wisdom to do more than is necessary to answer these objects—powers for these purposes can be given without surrendering up our liberties.
21. The new government will take the burthen from the farmer and planter, and the poor people and place it on trade—because duties on imports and tax on Excise will be adopted. Ans. Why cannot state governments do the same?—In truth it is only changing in part the mode of taxation—Explain it. Why poll tax is not for the benefit of the poor.

22. Regulations of trade and treaties of commerce will bring in money—employ our merchants—shipbuilders. Ans. if true, give those powers but not those granted.

23. The people can't be worse.

Ans. Why are they distressed?—many from their private debts—some from taxes—all from the scarcity of money. Will new government pay private debts? Will it lessen taxes? It will make our Continental debt specie—It is now at 8 for 1. £200,000 would pay the proportion of this state—it was proposed by an emission—consider the Expenses of National government.

24. The government is calculated for a few rich and ambitious men—and speculators in certificates.

25. Merchants are for it.

Ans. Consider them. Birds of passage.

26. General Washington et al. for it.

27. May amend afterwards.

Ans. The amendments proposed prove that these are capital defects. Should amend before adoption—1. because it is easy to grant and very difficult to recall power which from its nature is ever encroaching. 2. No wise people ever gave power over their liberties with a view of getting back the power. 3. it is now the power of five states to obtain amendments—afterwards there must be nine.—4. a bad government becomes more feared every day by its officers. 5. why not another convention? Who is violent for it. Ans. Rich men and speculators and office hunters.

Call on friends to give reasons for new government. [On the margin of this paper the following;]—why call on people at large? Haste—no delay—Senate for Jan'y.—³⁴

The greatest happiness of a people is to govern themselves. Their greatest misery to be governed by others;—

Our state government is fully competent to all internal state purposes.

For the safety and happiness of the people of this and the other states, external objects, or such for which the state governments are not competent are to be provided for.

1. To provide a form to regulate commerce among the states and to preserve peace between the States—resort against domestic enemies, with Indian tribes, and to coin money and to regulate the value thereof, and of foreign coin and to fix the standard of weights and measures—to establish post offices and post roads—may be called a general internal or continental object.

2. To preserve all the States from injury or violence from the foreign powers of Europe and to shield them against foreign hostility may be called a general external or foreign object.

3. To regulate the trade of the states with foreigners, by acts of navigation and by treaties of commerce with the powers of Europe may be also called a general external or foreign object.

I am for the establishment of power in Congress for all the above or similar purposes.

The 1st—to preserve peace between the states, etc. may be provided for

without much difficulty (and about which there never has been nor can be much difference in opinion) by establishing a supreme power to decide all controversies between the states, to coin money, etc. etc. and by a Bill of Rights declaring what the states shall not do—as, e.g. not to enter into any treaty, keep troops, coin money, or do any of the above or other acts which the supreme power of all the states are authorised to do.

The 2nd—to preserve all the states etc.—This necessarily includes the power of war,—and the means to carry it on—i.e. to raise money, to maintain troops and to provide a navy: and it includes the jurisdiction of piracies and felonies on the high seas and of all offences against the law of nations. This also includes the payment of the debt contracted by the United States.

This power is necessary, but not immediately pressing—consider the situation of confederation—but attended with some difficulty. It requires a legislative, an executive and a judicial authority.

Every legislative power should be vested in two, if not three Branches, and they ought to be the real, and not the fictitious representatives of the people. Their numbers ought to be sufficient to know the wants and the wishes of those they represent—too numerous to be corrupted and not so great as to be a mob.

The Executive of the states ought to be in a supreme magistrate or president—ineligible after a limited time with a Council of short duration and responsible for their advice.

The Judicial should be confined to the decision of cases arising on treaties. [The clause “on treaties” is substituted for—“under the constitution and laws”—erased.] The great question is in what manner the legislative [sic] of the [United]³⁵ states shall raise taxes on the people of the several states.

I would not give this power—only on default of a state to raise its quota as required. If neglected, I would authorise the legislative to lay and collect imposts and duties on tonnage without limitation, provided they be uniform in all the states; also taxes not exceeding limited sums on enumerated articles of exports, and stamp- and post office duties. If they [be] not sufficient, an excise. Provided they be the same in all the states and that Congress officers be held to account for abuse of authority in the states. and if all [be] not sufficient, a tax on land not exceeding 1/2 d. per acre.

I would [?Query? not (inserted and then struck through, apparently by Bancroft)] give the power of taxation without requisition being first made to the states. It is difficult to say what taxes the legislative may lay, but some limitation is necessary.

The Third—to regulate trade—

I am against giving this power—but if it is given let it be to 2/3 of the Senate. [Earlier in the original ms. we find erased—“The 3d—to regulate trade etc.—This I would agree to”—the sentence being left unfinished.]

REFERENCES

1. Philip A. Crowl, *Maryland during and after the Revolution; a Political and Economic Study* (Baltimore, 1943), pp. 97, 127-129, 143, and “Anti-Federalism in Maryland, 1787-1788,” *William and Mary Quarterly*, 3d. ser., IV (1947):446-469. Crowl's article, much more than his book, qualifies the economic motivation by brief reference to other motives of Maryland Antifederalist leaders.

2. Allan Nevins, *The American States during and after the Revolution, 1775-1789* (New York, 1924), p. 319; Forrest McDonald, *We the People: The Economic Origins of the Constitution* (Chicago, 1958), pp. 154-155; Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1781-1788* (Chapel Hill, N. C., 1961), p. 215; Norman K. Risjord, *Chesapeake Politics, 1781-1800* (New York, 1978), p. 279. Some pertinent sources, notably Bernard C. Steiner, "Maryland's Adoption of the Federal Constitution," *American Historical Review*, V (1899-1900):22-44, 207-224, offer no interpretation of Chase's motives.
3. Risjord, *Chesapeake Politics*, pp. 278-279. Risjord qualifies his assertion with the statement that Chase "may have" made a serious analysis of the Constitution in his speech to the Maryland ratifying convention.
4. *The Maryland Gazette, or the Baltimore General Advertiser*, October 3, 1788; Alexander Contee Hanson, "To the People of Maryland," ms. address, *Documentary History of the Constitution of the United States*, (5 vols.; Washington, D. C., 1905), IV: 651.
5. Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, N. C., 1969), pp. 475-518.
6. For a full interpretation of Chase's political philosophy, see James Haw, Francis and Rosamond Randall Beirne, and R. Samuel Jett, *Stormy Patriot: The Life of Samuel Chase* (Baltimore, 1980).
7. *The Independent Gazetteer; or, The Chronicle of Freedom* (Philadelphia), November 14, 1787. Eleazar Oswald was the printer of this paper. "Brutus, Jr." refutes in this article the Federalist argument that, without the Constitution, the United States would have no government, resulting in "anarchy and confusion . . . and in the end, a government will be imposed on us" by force.
8. "A Democrat Federalist," Baltimore *Maryland Gazette*, October 26, 1787, warned of danger from the extensive judicial powers given to the central government. He claimed that "the trial of facts in civil cases by a jury of the Vicinage is entirely and effectually abolished." Without trial by jury, citizens would have no effective protection against violations of their rights by federal officers.
9. Philadelphia *Independent Gazetteer*, October 27, November 1, 1787. The "Old Whig" essays are not numbered in the paper, but these two—the fourth and fifth in the series—urge the necessity of a bill of rights in the Constitution.
10. *Ibid.*, March 20, 1788. "Columbian Patriot" objected to the Constitution's alleged "abolition of trial by jury in civil causes" as dangerous to liberty.
11. Possibly a defense of the Constitution by "Aratus," "To the People of Maryland," ms. broadside, Maryland Historical Society, Baltimore, cited by Lee Lovely Verstandig, "The Emergence of the Two-Party System in Maryland 1787-1796" (Ph.D. diss., Brown University, 1970), p. 232 n. 28.
12. Article 13 of the Articles of Confederation stated that the union was perpetual and the Articles could not be amended without the consent of Congress and all the state legislatures. Worthington Chauncey Ford, ed., *Journals of the Continental Congress, 1774-1789*, (34 vols.; Washington, D. C., 1904-1937), 9:925.
13. "Aristides" [Alexander Contee Hanson], *Remarks on the Proposed Plan of a Federal Government, Addressed to the Citizens of the United States of America, And Particularly to the People of Maryland* (Annapolis, [1788]), 9, stated that the constitutional convention did not exceed its authority. "With no other power was it invested, than is possessed by every free citizen of the states." It was called to advise the nation on the additional power needed by Congress, and has done so. It was asked to recommend amendments to the Articles of Confederation; "striking out the whole, and substituting something in its room" is one form of amendment.
Chase points out that the constitutional convention cannot be justified under the theory of representative government advanced by Hanson during the paper money controversy. At that time, opposing Chase's claim that both houses of the legislature would be bound to obey instructions from a majority of their constituents, Hanson stated that representative government barred the people from directly exercising between elections the deliberative and legislative powers they had delegated to their representatives ("Aristides," *Maryland Gazette* (Annapolis), April 19, 1787). How, then, could Hanson say that the people could resume and give to the constitutional convention the power to rewrite the Articles of Confederation, which they had explicitly delegated to Congress and the state legislatures?
14. Philadelphia *Independent Gazetteer*, November 29, 1787, summarizes the proceedings of the Pennsylvania ratifying convention. Chase here refers to the paper's report of James Wilson's remarks to the convention.
15. McKean's remarks to the convention; Philadelphia *Independent Gazetteer*, November 29, 1787.
16. "Aristides" [Hanson], *Remarks on Proposed Plan*, p. 30, argues that the constitutional convention was correct in calling for a vote on the Constitution as a whole. If each state were allowed to accept some parts and reject others, only scattered sections would be ratified by nine states, resulting in a chaotic situation.

17. All passages in brackets are so contained in Bancroft's copy of the original document unless otherwise noted.
18. Charles Louis de Secondat, Baron de la Brede et de Montesquieu, *The Spirit of the Laws*, tr. by Thomas Nugent (New York, 1949; orig. publ. 1748), p. 120. The citation should be to book VIII section 16. "Brutus, No. 1," and "Cato, No. 3," *The New York Journal, and Weekly Register* October 18, 25, 1787, both cite Montesquieu in arguing that republicanism can survive only in a small state.
19. On November 26, 1787, the Maryland Senate resolved that the election for a state ratifying convention should be held on the third Wednesday in January, 1788, and the convention should meet on the first Monday in March. The House of Delegates voted on November 27 to hold the election on the first Monday in April and the convention on April 21. The Senate on December 1 agreed to the lower house's resolution to avoid delay through argument. Crowl, *Maryland during and after Revolution*, pp. 117-118.
20. Of the U. S. Constitution. All later citations of article and section refer to the Constitution otherwise noted.
21. "Aristides" [Hanson], *Remarks on Proposed Plan*, p. 9. Hanson said in a footnote that legislature would decide whether to elect Congressmen at large or by district. Hanson prefers the former.
22. Rufus King, replying in the Massachusetts ratifying convention on January 9, 1788, to Antifederalist objections that the senators' six-year terms would make them dangerously independent of their constituents, argued that the classing of senators reduced their terms to an average of four years (initially). Chase apparently answers King by arguing that senators who please (the majority of the senate?) will get the longer terms. *Debates, Resolutions and Other Proceedings of the Convention of the Commonwealth of Massachusetts, Convened at Boston, on the 9th of January, 1788* . . . (Boston, 1788), p. 73.
23. The citations in this section are to the Maryland Declaration of Rights of 1776, conveniently found in *The Decisive Blow Is Struck*, introduction by Edward C. Papenfuss and Gregory A. Stiverson (Annapolis, 1977).
24. Article I, section 4 of the Constitution is not pertinent. Chase must have intended to cite Article I, section 9 or Article IV, section 4. "Aristides" [Hanson], *Remarks on Proposed Plan*, p. 37, denied that the states would be destroyed or "dwindle into something like city corporations." The impost was a proposed amendment to the Articles of Confederation that would have given Congress the power to levy an import duty, but I have not identified Chase's reference to Impost 38. John Dickinson, *Letters from a Farmer in Pennsylvania to the Inhabitants of the British Colonies*, Letter No. IX, in Forrest McDonald, ed., *Empire and Nation* (Englewood Cliffs, N. J., 1962), pp. 57-58, affirmed that Parliamentary taxation would reduce the colonial assemblies to "shadows," if indeed they ever met at all. Chase believed taxation by Congress under the Constitution would have the same effect on state legislatures.
25. "Old Whig," *Philadelphia Independent Gazetteer*, October 27, November 1, 1787; "Brutus, No. 2," *New York Journal*, November 1, 1787. Both contain arguments for a bill of rights, including freedom of conscience. Chase appears to single out this right for more prominent treatment than either of his sources.
26. John Clayton, *Reports and Pleas of Assises at Yorke, Held before severall Judges in that Circuit, with Some Presidents [sic] usefull for Pleaders at the Assisses: Never englished before* (London, 1651), p. 44. Ward's Case: "Action of Battery against a Constable who had made a search in the Plaintiffs house for stollen goods by vertue of a Justices of Peace his warrant to search in all suspicious places, and upon the evidence it appeared the Defendant in the Search did pull the clothes from off a womans bed [she being] then in her bed, to search under her Smock, and was holden to be a misdemeanor in the Constable, and all with him & did make all this proceedings in this place illegal from the beginning." This case is cited by "A Democratic Federalist," *Baltimore Maryland Gazette*, October 26, 1787; see n. 8 above.
27. Article 28 of the Maryland Declaration of Rights forbade quartering soldiers in private homes in peacetime without the owner's consent, "and in time of war, in such manner only, as the Legislature shall direct."
28. Sir William Blackstone, *Commentaries on the Laws of England* (Philadelphia, 1879; orig. publ. 1765-1769). Book III, chapter 23 discusses trial by jury. This should be the citation; there is no chapter 33.
29. *Debates, Resolutions and Proceedings of Convention of Massachusetts*. In the debates on Article I, section 4, Phanael Bishop argued that, if Congress needed the power to alter Congressional election arrangements "in order that refractory States may be made to do their duty," the Constitution should explicitly state that Congress could act only "if any State shall refuse or neglect" to make proper arrangements (p. 47). Theophilus Parsons argued at length that the

provision as written was needed also to maintain a proper balance of power between the two houses of Congress and their respective constituents, the people and the state legislature (p. 51). At the close of the debate on this section, the reporter summarized the major Federalist arguments in favor of the provision: "first, as it may be used to correct a negligence in elections; secondly, as it will prevent the dissolution of the government by designing and refractory states; thirdly, as it will operate as a check in favour of the people, against any designs of the federal senate, and their constituents, the state legislatures, to deprive the people of their right of election; and fourthly, as it provides a remedy for the evil, should any state, by invasion, or other cause, not have it in its power to appoint a place. . . ." (p. 60).

30. Chase means Article VI of the Constitution. Why he cited the treaty clause here is not apparent, unless he feared that Congress might alter the election machinery by treaty.
31. "Aristides" [Hanson], *Remarks on Proposed Plan*, p. 11, argued that Congress's power to alter the time and manner of electing senators was not dangerous. It would be exercised only in case of invasion or if a state refused to act, and Congress needed the power to act in such cases.
32. The Massachusetts convention accompanied ratification with recommended constitutional amendments, one of which was "That Congress do not exercise the powers vested in them by the 4th section of the 1st article, but in cases when a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress, agreeably to the Constitution." *Debates, Resolutions and Proceedings of Convention of Massachusetts*, p. 211.
33. The reference should be to Article II, section 1.
34. See above, n. 19.
35. This is my insertion.