V The Constitutions of Virginia and France

V.1 From the Autobiography
   TJ’s account of his part in revising the laws of Virginia

V.2 Notes on Virginia: Query XIII
   Defects of the Virginia State Constitution: “This constitution was formed when we were new and unexperienced in the science of government. It was the first, too, which was formed in the whole United States. No wonder then that time and trial have discovered very capital defects in it.” Quite revealing re TJ’s pragmatic attitude toward constitutional arrangements and their alteration

V.3 To Edmund Pendleton, Aug. 26, 1776
   A brief defense of TJ’s ideas for a draft constitution for Virginia, with special reference to representation, rotation in office, and constitutional interpretation—“let the judge be a mere machine”

V.4 Proposed Constitution for Virginia (June 1783)
   Published as an appendix to the Notes on Virginia, this draft constitution, offered as an alternative to the “defective” constitution described above, exhibits TJ’s republican sympathies

V.5 To Rabaut de St. Etienne, June 3, 1789
   Outline of a proposed Charter of Rights for France
his administration in the highest office of the nation, I need say nothing. They have spoken, and will forever speak for themselves.

So far we were proceeding in the details of reformation only, selecting points of legislation prominent in character & principle, urgent, and indicative of the strength of the general pulse of reformation. When I left Congress, in 76, it was in the persuasion that our whole [Virginia] code must be reviewed, adapted to our republican form of government, and, now that we had no negatives of Councils, Governors & Kings to restrain us from doing right, that it should be corrected, in all its parts, with a single eye to reason, & the good of those for whose government it was framed. Early therefore in the session of 76 to which I returned, I moved and presented a bill for the revision of the laws; which was passed on the 24th of October, and on the 5th of November Mr. [Edmund] Pendleton, Mr. Wythe, George Mason, Thomas L. Lee and myself were appointed a committee to execute the work. We agreed to meet at Fredericksburg to settle the plan of operation and to distribute the work. We met there accordingly, on the 13th of January 1777. The first question was whether we should propose to abolish the whole existing system of laws, and prepare a new and complete Institute, or preserve the general system, and only modify it to the present state of things. Mr. Pendleton, contrary to his usual disposition in favor of antient things, was for the former proposition, in which he was joined by Mr. Lee. To this it was objected that to abrogate our whole system would be a bold measure, and probably far beyond the views of the legislature; that they had been in the practice of revising from time to time the laws of the colony, omitting the expired, the repealed and the obsolete, amending only those retained, and probably meant we should now do the same, only including the British statutes as well as our own: that to compose a new Institute like those of Justinian and Bracton, or that of Blackstone, which was the model proposed by Mr. Pendleton, would be an arduous undertaking, of vast research, of great consideration & judgment; and when reduced to a text, every word of that text, from the imperfection of human language, and its incompentence to express distinctly every shade of idea, would become a subject of question & chicanery until settled by repeated adjudications; that this would involve us for ages in litigation, and render property uncertain until, like the statutes of old, every word had been tried.

and settled by numerous decisions, and by new volumes of reports & commentaries; and that no one of us probably would undertake such a work, which, to be systematical, must be the work of one hand. This last was the opinion of Mr. Wythe, Mr. Mason & myself. When we proceeded to the distribution of the work, Mr. Mason excused himself as, being no lawyer, he felt himself unqualified for the work, and he resigned soon after. Mr. Lee excused himself on the same ground, and died indeed in a short time. The other two gentlemen therefore and myself divided the work among us. The common law and statutes to the 4 James I (when our separate legislature was established) were assigned to me; the British statutes from that period to the present day to Mr. Wythe, and the Virginia laws to Mr. Pendleton. As the law of Descents, & the criminal law fell of course within my portion, I wished the committee to settle the leading principles of these, as a guide for me in framing them. And with respect to the first, I proposed to abolish the law of primogeniture, and to make real estate descendible in personal [joint heirship] to the next of kin, as personal property is by the statute of distribution. Mr. Pendleton wished to preserve the right of primogeniture, but seeing at once that that could not prevail, he proposed we should adopt the Hebrew principle, and give a double portion to the elder son. I observed that if the eldest son could eat twice as much, or do double work, it might be a natural evidence of his right to a double portion; but being on a par in his powers & wants, with his brothers and sisters, he should be on a par also in the partition of the patrimony, and such was the decision of the other members.

On the subject of the Criminal law, all were agreed that the punishment of death should be abolished, except for treason and murder; and that, for other felonies should be substituted hard labor in the public works, and in some cases, the Lex talionis. How this last revolting principle came to obtain our approbation, I do not remember. There remained indeed in our laws a vestige of it in a single case of a slave. It was the English law in the time of the Anglo-Saxons, copied probably from the Hebrew law of "an eye for an eye, a tooth for a tooth," and it was the law of several antient people. But the modern mind had left it far in the rear of it's advances. These points however being settled, we repaired to our respective homes for the preparation of the work.
Feb. 6. In the execution of my part I thought it material not to vary the diction of the antient statutes by modernizing it, nor to give rise to new questions by new expressions. The text of these statutes had been so fully explained and defined by numerous adjudications, as scarcely ever now to produce a question in our courts. I thought it would be useful also, in all new draughts, to reform the style of the later British statutes, and of our own acts of assembly, which from their verbosity, their endless tautologies, their involutions of case within case, and parenthesis within parenthesis, and their multiplied efforts at certainty by \textit{saids} and \textit{aforesaid}, by \textit{ors} and by \textit{ands}, to make them more plain, do really render them more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves.

Ford i. 56-61

\textbf{V.2 Notes on Virginia: Query xiii}

[Defects of the Virginia State Constitution]

This constitution was formed when we were new and unexperienced in the science of government. It was the first, too, which was formed in the whole United States. No wonder then that time and trial have discovered very capital defects in it.

1. The majority of the men in the state, who pay and fight for its support, are unrepresented in the legislature, the roll of free-holders entitled to vote, not including generally the half of those on the roll of the militia, or of the tax-gatherers.

2. Among those who share the representation, the shares are very unequal. Thus the county of Warwick, with only one hundred fighting men, has an equal representation with the county of Loudon, which has 1,746. So that every man in Warwick has as much influence in the government as 17 men in Loudon. But lest it should be thought that an equal interspersion of small among large counties, through the whole state, may prevent any danger of injury to particular parts of it, we will divide it into districts, and shew the proportions of land, of fighting men, and of representation in each.

\begin{tabular}{|c|c|c|}
\hline
\textbf{Between the sea-coast and falls of the rivers} & \textbf{Square miles} & \textbf{Fighting men} & \textbf{Delegates Senators} \\
\hline
11,205 & 19,012 & 71 & 12 \\
\hline
Between the falls of the rivers and Blue Ridge of mountains & 18,759 & 18,828 & 46 & 8 \\
\hline
Between the Blue Ridge and the Alleghany & 11,911 & 7,673 & 16 & 2 \\
\hline
Between the Alleghany and Ohio & 279,050 & 4,458 & 16 & 2 \\
\hline
Total & 121,525 & 49,971 & 149 & 24 \\
\hline
\end{tabular}

\footnote{Of these, 542 are on the eastern shore.}

\footnote{Of these, 22,616 are Eastward of the meridian of the mouth of the Great Kanahaway.}

An inspection of this table will supply the place of commentaries on it. It will appear at once that nineteen thousand men, living below the falls of the rivers, possess half of the senate, and want four members only of possessing a majority of the house of delegates; a want more than supplied by the vicinity of their situation to the seat of government, and of course the greater degree of convenience and punctuality with which their members may and will attend in the legislature. These nineteen thousand, therefore, living in one part of the country, give law to upwards of thirty thousand living in another, and appoint all their chief officers executive and judiciary. From the difference of their situation and circumstances, their interests will often be very different.

3. The senate is, by its constitution, too homogenous with the house of delegates. Being chosen by the same electors, at the same time, and out of the same subjects, the choice falls of course on men of the same description. The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles. Thus in Great Britain it is said their constitution relies on the house of commons for honesty, and the lords for wisdom; which would be a rational reliance, if honesty were to be bought with money, and if wisdom were hereditary. In some of the American States, the delegates and senators are so chosen, as that the first represent the persons, and the second the
property of the State. But with us, wealth and wisdom have equal chance for admission into both houses. We do not, therefore, derive from the separation of our legislature into two houses, those benefits which a proper complication of principles is capable of producing, and those which alone can compensate the evils which may be produced by their dissensions.

4. All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. 173 despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason that convention, which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers. The judiciary and executive members were left dependent on the legislative, for their subsistence in office, and some of them for their continuance in it. If therefore the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can it be effectual; because in that case they may put their proceedings into the form of an act of assembly, which will render them obligatory on the other branches. They have accordingly in many instances, decided rights which should have been left to judiciary controversy, and the direction of the executive, during the whole time of their session, is becoming habitual and familiar. And this is done with no ill intention. The views of the present members are perfectly upright. When they are led out of their regular province, it is by art in others, and inadvertence in themselves. And this will probably be the case for some time to come. But it will not be a very long time. Mankind soon learn to make interested uses of every right and power which they possess, or may assume. The public money and public liberty, intended to have been deposited with three branches of magistracy, but found inadvertently to be in the hands of one only, will soon be discovered to be sources of wealth and dominion to those who hold them; distinguished, too, by this tempting circumstance, that they are the instrument, as well as the object, of acquisition. With money we will get men, said Cesar, and with men we will get money. Nor should our assembly be deluded by the integrity of their own purposes, and conclude that these unlimited powers will never be abused, because themselves are not disposed to abuse them. They should look forward to a time, and that not a distant one, when a corruption in this, as in the country from which we derive our origin, will have seized the heads of government, and be spread by them through the body of the people; when they will purchase the voices of the people, and make them pay the price. Human nature is the same on every side of the Atlantic, and will be alike influenced by the same causes. The time to guard against corruption and tyranny, is before they shall have gotten hold of us. It is better to keep the wolf out of the fold, than to trust to drawing his teeth and talons after he shall have entered. To render these considerations the more cogent, we must observe in addition.

5. That the ordinary legislature may alter the constitution itself. On the discontinuance of assemblies, it became necessary to substitute in their place some other body, competent to the ordinary business of government, and to the calling forth the powers of the State for the maintenance of our opposition to Great Britain. Conventions were therefore introduced, consisting of two delegates from each county, meeting together and forming one house, on the plan of the former house of Burgess, to whose places they succeeded. These were at first chosen anew for every particular session. But in March 1775, they recommended to the people to choose a convention, which should continue in office a year. This was done, accordingly, in April 1775, and in the July following that convention passed an ordinance for the election of delegates in the month of April annually. It is well known, that in July 1775, a separation from Great Britain and establishment of republican government, had never yet entered into any person's mind. A convention, therefore, chosen under that ordinance, cannot be said to have been chosen for the
purposes which certainly did not exist in the minds of those who passed it. Under this ordinance, at the annual election in April 1776, a convention for the year was chosen. Independence, and the establishment of a new form of government, were not even yet the objects of the people at large. One extract from the pamphlet called Common sense¹ had appeared in the Virginia papers in February, and copies of the pamphlet itself had got in a few hands. But the idea had not been opened to the mass of the people in April, much less can it be said that they had made up their minds in its favor. So that the electors of April 1776, no more than the legislators of July 1775, not thinking of independence and a permanent republic, could not mean to vest in these delegates powers of establishing them, or any authorities other than those of the ordinary legislature. So far as a temporary organization of government was necessary to render our opposition energetic, so far their organization was valid. But they received in their creation no powers but what were given to every legislature before and since. They could not, therefore, pass an act transcendent to the powers of other legislatures. If the present assembly pass an act, and declare it shall be irrevocable by subsequent assemblies, the declaration is merely void, and the act repealable, as other acts are. So far, and no farther authorized, they organized the government by the ordinance intitled a Constitution or Form of government. It pretends to no higher authority than the other ordinance of the same session; it does not say that it shall be perpetual; that it shall be unalterable by other legislatures; that it shall be transcendent above the powers of those who they knew would have equal power with themselves. Not only the silence of the instrument is a proof they thought it would be alterable, but their own practice also; for this very convention, meeting as a House of Delegates in General assembly with the Senate in the autumn of that year, passed acts of assembly in contradiction to their ordinance of government; and every assembly from that time to this has done the same. I am safe in therefore the position that the constitution itself is alterable by the ordinary legislature. Though this opinion seems founded on the first elements of common sense, yet it is the contrary maintained by some persons. 1. Because, say they, the conventions were vested with every power necessary to make effectual opposition to Great Britain. But to complete this argument, they must go on, and say further, that effectual opposition could not be made to Great Britain without establishing a form of government perpetual and unalterable by the legislature; which is not true. An opposition which at some time or other was to come to an end, could not need a perpetual institution to carry it on: and a government amendable as its defects should be discovered, was as likely to make effectual resistance, as one that should be unalterably wrong. Besides, the assemblies were as much vested with all powers requisite for resistance as the Conventions were. If therefore these powers included that of modelling of government in the one case, they did so in the other. The assemblies then as well as the conventions may model the government; that is, they may alter the ordinance of government, 2. They urge that if the convention had meant that this instrument should be alterable, as their other ordinances were, they would have called it an ordinance; but they have called it a constitution, which, ex vi termini, means "an act above the power of the ordinary legislature." I answer that constitutio, constitutum, substantum, lex, are convertible terms. "Constitutio dicitur jus quod a principio conditur." "Constitutum, quod ab imperatoribus rescriptum statutumve est." "Statutum, idem quod lex." Calvinii Lexicon juridicum. Constitution and statute were originally terms of the civil law, and from thence introduced by Ecclesiastics into the English law. Thus in the statute 25 Hen. VIII. c. 19, § 1, "Constitutions and ordinances" are used as synonymous. The term constitution has many other significations in physics and politics; but in Jurisprudence, whenever it is applied to any act of the legislature, it invariably means a statute, law, or ordinance, which is the present case. No inference then of a different meaning can be drawn from the adoption of this title: on the contrary, we might conclude that, by their affixing to it a term synonymous with ordinance or statute, they meant it to be an ordinance or statute. But of what consequence is their meaning, where their power is denied? If they meant to do more than they had power to do, did this give them power? It is not the name, but the authority which renders an act obligatory.


² To bid, to set, was the ancient legislative word of the English. Ll. Hlotharri and Eadwine. Ll. Inc. Ll. Eadwini. Ll. Ethelstani.
person should attempt to revoke any ordinance then made, is repealed, for that such restraint is against the jurisdiction and power of the parliament.” 4. inst. 42. and again, “though divers parliaments have attempted to restrain subsequent parliaments, yet could they never effect it; for the latter parliament hath ever power to abrogate, suspend, qualify, explain, or make void the former in the whole or in any part thereof, notwithstanding any words of restraint, prohibition, or penalty, in the former; for it is a maxim in the laws of the parliament, ‘quo leges posteriores priores contrahunt abrogant.’” 5. inst. 43. —To get rid of the magic supposed to be in the word constitution, let us translate it into its definition as given by those who think it above the power of the law; and let us suppose the convention, instead of saying, “We the ordinary legislature, establish a constitution,” had said, “We the ordinary legislature, establish an act above the power of the ordinary legislature.” Does not this expose the absurdity of the attempt? 3. But, say they, the people have acquiesced, and this has given it an authority superior to the laws. It is true that the people did not rebel against it: and was that a time for the people to rise in rebellion? Should a prudent acquiescence, at a critical time, be construed into a confirmation of every illegal thing done during that period? Besides, why should they rebel? At an annual election they had chosen delegates for the year, to exercise the ordinary powers of legislation, and to manage the great contest in which they were engaged. These delegates thought the contest would be best managed by an organized government. They therefore, among others, passed an ordinance of government. They did not presume to call it perpetual and unalterable. They well knew they had no power to make it so; that our choice of them had been for no such purpose, and at a time when we could have no such purpose in contemplation. Had an unalterable form of government been meditated, perhaps we should have chosen a different set of people. There was no cause then for the people to rise in rebellion. But to what dangerous lengths will this argument lead? Did the acquiescence of the colonies under the various acts of power exercised by Great Britain in our infant state, confirm these acts, and so far invest them with the authority of the people as to render them unalterable, and our present resistance wrong? On every unauthoritative exercise of power by the legislature must the people rise in rebellion, or their silence be construed into a surrender of that power to them? If so, how many rebellions should we have had already? One certainly for every session of assembly. The other states in the union have been of opinion that to render a form of government unalterable by ordinary acts of assembly, the people must delegate persons with special powers. They have accordingly chosen special conventions to form and fix their governments. The individuals then who maintain the contrary opinion in this country, should have the modesty to suppose it possible that they may be wrong, and the rest of America right. But if there be only a possibility of their being wrong, if only a plausible doubt remains of the validity of the ordinance of government, is it not better to remove that doubt by placing it on a bottom which none will dispute? If they be right we shall only have the unnecessary trouble of meeting once in convention. If they be wrong, they expose us to the hazard of having no fundamental rights at all. True it is, this is no time for deliberating on forms of government. While an enemy is within our bowels, the first object is to expel him. But when this shall be done, when peace shall be established, and leisure given us for unstirring within good forms, the rights for which we have bled, let no man be found indolent enough to decline a little more trouble for placing them beyond the reach of question. If anything more be requisite to produce a conviction of the expediency of calling a convention at a proper season to fix our form of government, let it be the reflection:

6. That the assembly exercises a power of determining the quorum of their own body which may legislate for us. After the establishment of the new form they adhered to the Lex majoris pars, founded in common law as well as common right. It is the natural law of every assembly of men, whose numbers are not fixed by any other law. They continued for some time to require the presence of a majority of their whole number, to pass an act. But the British parliament fixes its own quorum; our former assemblies fixed their own quorum; and one precedent in favor of power is stronger than an hundred against it. The house of delegates, therefore, have lately voted that, during the present dangerous invasion, forty members shall be a house to proceed to business. They have

3. *June 4, 1781.*
been moved to this by the fear of not being able to collect a house. But this danger could not authorize them to call that a house which was none; and if they may fix it at one number, they may at another, till it loses its fundamental character of being a representative body. As this vote expires with the present invasion, it is probable the former rule will be permitted to revive; because at present no ill is meant. The power, however, of fixing their own quorum has been avowed, and a precedent set. From forty it may be reduced to four and from four to one; from a house to a committee, from a committee to a chairman or speaker, and thus an oligarchy or monarchy be substituted under forms supposed to be regular. “Omnia maxima ex bonis orta sunt; sed ubi imperium ad ignaros aut minus bonos pervenit, novum illud exemptulum ab dignis et idoneis a indignis et non idoneos fertur.” When, therefore, it is considered, that there is no legal obstacle to the assumption by the assembly of all the powers legislative, executive, and judiciary, and that these may come to the hands of the smallest rag of delegation, surely the people will say, and their representatives, while yet they have honest representatives, will advise them to say, that they will not acknowledge as laws any acts not considered and assented to by the majority of their delegates.

In enumerating the defects of the constitution, it would be wrong to count among them what is only the error of particular persons. In December 1776, our circumstances being much distressed, it was proposed in the house of delegates to create a dictator, invested with every power legislative, executive, and judiciary, civil and military, of life and of death, over our persons and over our properties; and in June 1781, again under calamity, the same proposition was repeated, and wanted a few votes only of being passed. One who entered into this contest from a pure love of liberty, and a sense of injured rights, who determined to make every sacrifice, and to meet every danger, for the re-establishment of those rights on a firm basis, who did not mean to expend his blood and substance for the wretched purpose of changing this master for that, to place the powers of governing him in a plurality of hands of his own choosing, so that the corrupt will of no one man might in future oppress him, must stand confounded and dismayed when he is told, that a considerable portion of that plurality had meditated the surrender of them into a single hand, and, in lieu of a limited monarch, to deliver him over to a despotic one! How must we find his efforts and sacrifices abused and baffled, if he may still, by a single vote, be laid prostrate at the feet of one man! In God’s name, from whence have they derived this power? Is it from our ancient laws? None such can be produced. Is it from any principle in our new constitution expressed or implied? Every lineament of that expressed or implied, is in full opposition to it. Its fundamental principle is, that the state shall be governed as a commonwealth. It provides a republican organization, prescribes under the name of prerogative the exercise of all powers undefined by the laws, places on this basis the whole system of our laws; and by consolidating them together, chooses that they shall be left to stand or fall together, never providing for any circumstances, nor admitting that such could arise, wherein either should be suspended, no, not for a moment. Our ancient laws expressly declare, that those who are but delegates themselves shall not delegate to others powers which require judgment and integrity in their exercise. Or was this proposition moved on a supposed right in the movers, of abandoning their posts in a moment of distress? The same laws forbid the abandonment of that post, even on ordinary occasions, and much more a transfer of their powers into other hands and other forms, without consulting the people. They never admit the idea that these, like sheep or cattle, may be given from hand to hand without an appeal to their own will. Was it from the necessity of the case? Necessities which dissolve a government, do not convey its authority to an oligarchy or a monarchy. They throw back, into the hands of the people, the powers they had delegated, and leave them as individuals to shift for themselves. A leader may offer, but not impose himself, nor be imposed on them. Much less can their necks be submitted to his sword, their breath be held at his will or caprice. The necessity which should operate these tremendous effects should at least be palpable and irresistible. Yet in both instances, where it was feared, or pretended with us, it was belied by the event. It was belied, too, by the preceding experience of our sister states, several of whom had grappled through greater difficulties without abandoning their forms of government. When the proposition was first made, Massachusetts had found even the
government of committees sufficient to carry them through an invasion. But we at the time of that proposition, were under no invasion. When the second was made, there had been added to this example those of Rhode-Island, New-York, New-Jersey, and Pennsylvania, in all of which the republican form had been found equal to the task of carrying them through the severest trials. In this state alone did there exist so little virtue, that fear was to be fixed in the hearts of the people, and to become the motive of their exertions, and the principle of their government? The very thought alone was treason against the people; was treason against mankind in general; as riveting forever the chains which bow down their necks, by giving to their oppressors a proof, which they would have trumpeted through the universe, of the imbecility of republican government, in times of pressing danger, to shield them from harm. Those who assume the right of giving away the reins of government in any case, must be sure that the herd, whom they hand on to the rods and hatchet of the dictator, will lay their necks on the block when he shall nod to them. But if our assemblies supposed such a resignation in the people, I hope they mistook their character. I am of opinion, that the government, instead of being braced and invigorated for greater exertions under their difficulties, would have been thrown back upon the bungling machinery of county committees for administration, till a convention could have been called, and its wheels again set into regular motion. What a cruel moment was this for creating such an embarrassment, for putting to the proof the attachment of our countrymen to republican government! Those who meant well, of the advocates for this measure (and most of them meant well, for I know them personally, had been their fellow-labourers in the common cause, and had often proved the purity of their principles), had been seduced in their judgment by the example of an antient republic, whose constitution and circumstances were fundamentally different. They had sought the precedent in the history of Rome, where alone it was to be found, and where at length, too, it had proved fatal. They had taken it from a republic not by the most bitter factions and tumults, where the government was of a heavy-handed unfeeling aristocracy, over a people ferocious, and rendered desperate by poverty and wretchedness; tumults which could not be allayed under the most trying circumstances, but by the omnipotent hand of a single despot. Their constitution, therefore, allowed a temporary tyrant to be erected, under the name of a Dictator; and that temporary tyrant, after a few examples, became perpetual. They misapplied this precedent to a people mild in their dispositions, patient under their trial, united for the public liberty, and affectionate to their leaders. But if from the constitution of the Roman government there resulted to their Senate a power of submitting all their rights to the will of one man, does it follow that the assembly of Virginia have the same authority? What clause in our constitution has substituted that of Rome, by way of residuary provision, for all cases not otherwise provided for? Or if they may step ad libitum into any other form of government for precedents to rule us by, for what oppression may not a precedent be found in this world of the bellum omnium in omnibus? Searching for the foundations of this proposition, I can find none which may pretend a colour of right or reason, but the defect before developed, that there being no barrier between the legislative, executive, and judiciary departments, the legislature may seize the whole: that having seized it, and possessing a right to fix their own quorum, they may reduce that quorum to one, whom they may call a chairman, speaker, dictator, or by any other name they please. — Our situation is indeed perilous, and I hope my countrymen will be sensible of it, and will apply, at a proper season, the proper remedy; which is a convention to fix the constitution, to amend its defects, to bind up the several branches of government by certain laws, which, when they transgress, their acts shall become nullities; to render unnecessary an appeal to the people, or in other words a rebellion, on every infrad of their rights, on the peril that their acquiescence shall be construed into an intention to surrender those rights.

Ford iii: 222–35

v.3 To Edmund Pendleton

Philadelphia, August 26, 1776

Dear Sir,— Your's of the 10th. inst. came to hand about three days ago, the post having brought no mail with him the last week. You
seem to have misapprehended my proposition for the choice of a Senate. I had two things in view: to get the wisest men chosen, and to make them perfectly independent when chosen. I have ever observed that a choice by the people themselves is not generally distinguished for its wisdom. This first secretion from them is usually crude and heterogeneous. But give to those so chosen by the people a second choice themselves, and they generally will chuse wise men. For this reason it was that I proposed the representatives (and not the people) should chuse the Senate, and thought I had notwithstanding that made the Senators (when chosen) perfectly independent of their electors. However I should have no objection to the mode of election proposed in the printed plan of your committee, to wit, that the people of each county should chuse twelve electors, who should meet those of the other counties in the same district and chuse a senator. I should prefer this too for another reason, that the upper as well as lower house should have an opportunity of superintending and judging of the situation of the whole state and be not all of one neighborhood as our upper house used to be. So much for the wisdom of the Senate. To make them independent, I had proposed that they should hold their places for nine years, and then go out (one third every three years) and be incapable for ever of being re-elected to that house. My idea was that if they might be re-elected, they would be casting their eyes forward to the period of election (however distant) and be courting favor with the electors, and consequently dependent on them. My reason for fixing them in office for a term of years rather than for life, was that they might have in idea that they were at a certain period to return into the mass of the people and become the governed instead of the governors which might still keep alive that regard to the public good that otherwise they might perhaps be induced by their independance to forget. Yet I could submit, tho' not so willingly to an appointment for life, or to any thing rather than a mere creation by and dependance on the people. I think the present mode of election objectionable because the larger county will be able to send and will always send a man (less fit perhaps) of their own county to the exclusion of a fitter who may chance to live in a smaller county. I wish experience may contradict my fears. That the Senate as well as lower (or shall I speak truth and call it upper) house should hold no office of profit I am clear; but not that they should of necessity possess distinguished property. You have lived longer than I have and perhaps may have formed a different judgment on better grounds; but my observations do not enable me to say I think integrity the characteristic of wealth. In general I believe the decisions of the people, in a body, will be more honest and more disinterested than those of wealthy men: and I can never doubt an attachment to his country in any man who has his family and peculium (fortune) in it. — Now as to the representative house which ought to be so constructed as to answer that character truly. I was for extending the right of suffrage (or in other words the rights of a citizen) to all who had a permanent intention of living in the country. Take what circumstances you please as evidence of this, either the having resided a certain time, or having a family, or having property, any or all of them. Whoever intends to live in a country must wish that country well, and has a natural right of assisting in the preservation of it. I think you cannot distinguish between such a person residing in the country and having no fixed property, and one residing in a township whom you say you would admit to a vote. — The other point of equal representation I think capital and fundamental. I am glad you think an alteration may be attempted in that matter. — The fantastical idea of virtue and the public good being a sufficient security to the state against the commission of crimes, which you say you have heard insisted on by some, I assure you was never mine. It is only the sanguinary hue of our penal laws which I meant to object to. Punishments I know are necessary, and I would provide them, strict and inflexible, but proportioned to the crime. Death might be inflicted for murther and perhaps for treason if you would take out of the description of treason all crimes which are not such in their nature. Rape, buggery &c. punish by castration. All other crimes by working on high roads, rivers, gallies &c. a certain time proportioned to the offence. But as this would be no punishment or change of condition to slaves (me miserum.) let them be sent to other countries. By these means we should be freed from the wick- edness of the latter, and the former would be living monuments of public vengeance. Laws thus proportionate and mild should never be dispensed with. Let mercy be the character of the law-giver, but let the judge be a mere machine. The merces of the law will be
dispensed equally and impartially to every description of men; those of the judge, or of the executive power, will be the eccentric impulses of whimsical, capricious designing man...

MS, Massachusetts Historical Society

v.4 Proposed Constitution for Virginia

[June, 1783]

To the citizens of the commonwealth of Virginia, and all others whom it may concern, the delegates for the said commonwealth in Convention assembled, send greeting:

It is known to you and to the world, that the government of Great Britain, with which the American States were not long since connected, assumed over them an authority unwarrantable and oppressive; that they endeavoured to enforce this authority by arms, and that the States of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, considering resistance, with all its train of horrors, as a lesser evil than abject submission, closed in the appeal to arms. It hath pleased the Sovereign Disposer of all human events to give to this appeal an issue favorable to the rights of the States; to enable them to reject forever all dependence on a government which had shown itself so capable of abusing the trusts reposed in it; and to obtain from that government a solemn and explicit acknowledgment that they are free, sovereign, and independent States. During the progress of that war, through which we had to labor for the establishment of our rights, the legislature of the commonwealth of Virginia found it necessary to make a temporary organization of government for preventing anarchy, and pointing our efforts to the two important objects of war against our invaders, and peace and happiness among ourselves. But this, like all other acts of legislation, being subject to change by subsequent legislatures, possessing equal powers with themselves; it has been thought expedient, that it should receive those amendments which time and trial have sug-

gested, and be rendered permanent by a power superior to that of the ordinary legislature. The general assembly therefore of this State recommended it to the good people thereof, to choose delegates to meet in general convention, with powers to form a constitution of government for them, and to declare those fundamentals to which all our laws present and future shall be subordinate; and, in compliance with this recommendation, they have thought proper to make choice of us, and to vest us with powers for this purpose.

We, therefore, the delegates, chosen by the said good people of this State for the purpose aforesaid, and now assembled in general convention, do, in execution of the authority with which we are invested, establish the following constitution and fundamentals of government for the said State of Virginia:

The said State shall forever hereafter be governed as a commonwealth.

The powers of government shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy; to wit, those which are legislative to one, those which are judiciary to another, and those which are executive to another. No person, or collection of persons, being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly permitted.

The legislature shall consist of two branches, the one to be called the House of Delegates, the other the Senate, and both together the General Assembly. The concurrence of both of these, expressed on three several readings, shall be necessary to the passage of a law.

Delegates for the general assembly shall be chosen on the last Monday of November in every year. But if an election cannot be concluded on that day, it may be adjourned from day to day till it can be concluded.

The number of delegates which each county may send shall be in proportion to the number of its qualified electors; and the whole number of delegates for the State shall be so proportioned to the whole number of qualified electors in it, that they shall never exceed three hundred, nor be fewer than one hundred. Whenever such excess or deficiency shall take place, the House of Delegates so deficient or excessive shall, notwithstanding this, continue in being during its legal term; but they shall, during that term, re-adjust the proportion, so as to bring their number within the limits before

Jefferson deeply disliked the Virginia Constitution of 1776 and hoped to replace it with this one. He was, however, unsuccessful. – Eds.
mentioned at the ensuing election. If any county be reduced in its qualified electors below the number authorized to send one delegate, let it be annexed to some adjoining county.

For the election of senators, let the several counties be allotted by the senate from time to time, into such and so many districts as they shall find best; and let each county at the time of electing its delegates, choose senatorial electors, qualified as themselves are, and four in number for each delegate their county is entitled to send, who shall convene, and conduct themselves, in such manner as the legislature shall direct, with the senatorial electors from the other counties of their district, and then choose, by ballot, one senator for every six delegates which their district is entitled to choose. Let the senatorial districts be divided into two classes, and let the members elected for one of them be dissolved at the first ensuing general election of delegates, the other at the next, and so on alternately forever.

All free male citizens, of full age, and sane mind, who for one year before shall have been resident in the county, or shall through the whole of that time have possessed therein real property of the value of—; or shall for the same time have been enrolled in the militia, and no others, shall have a right to vote for delegates for the said county, and for senatorial electors for the district. They shall give their votes personally, and \textit{viva voce}.

The general assembly shall meet at the place to which the last adjournment was, on the forty-second day after the day of election of delegates, and thenceforward at any other time or place on their own adjournment, till their office expires, which shall be on the day preceding that appointed for the meeting of the next general assembly. But if they shall at any time adjourn for more than one year, it shall be as if they had adjourned for one year precisely. Neither house, without the concurrence of the other, shall adjourn for more than one week, nor to any other place than the one at which they are sitting. The governor shall also have power, with the advice of the council of State, to call them at any other time to the same place, or to a different one, if that shall have become, since the last adjournment, dangerous from an enemy, or from infection.

A majority of either house shall be a quorum, and shall be requisite for doing business; but any smaller proportion which from time to time shall be thought expedient by the respective houses, shall be sufficient to call for, and to punish, their non-attending members, and to adjourn themselves for any time not exceeding one week.

The members, during their attendance on the general assembly, and for so long a time before and after as shall be necessary for travelling to and from the same, shall be privileged from all personal restraint and assault, and shall have no other privilege whatsoever. They shall receive, during the same time, daily wages in gold or silver, equal to the value of two bushels of wheat. This value shall be deemed one dollar by the bushel till the year 1790, in which and in every tenth year thereafter, the general court, at their first sessions in the year, shall cause a special jury, of the most respectable merchants and farmers, to be summoned, to declare what shall have been the averaged value of wheat during the last ten years; which averaged value shall be the measure of wages for the ten subsequent years.

Of this general assembly, the treasurer, attorney general, register, ministers of the gospel, officers of the regular armies of this State, or of the United States, persons receiving salaries or emoluments from any power foreign to our confederacy, those who are not resident in the county for which they are chosen delegates, or districts for which they are chosen senators, those who are not qualified as electors, persons who shall have committed treason, felony, or such other crime as would subject them to infamous punishment, or who shall have been convicted by due course of law of bribery or corruption, in endeavoring to procure an election to the said assembly, shall be incapable of being members. All others, not herein elsewhere excluded, who may elect, shall be capable of being elected thereto.

Any member of the said assembly accepting any office of profit under this State, or the United States, or any of them, shall thereby vacate his seat, but shall be capable of being re-elected.

Vacancies occasioned by such disqualifications, by death, or otherwise, shall be supplied by the electors, on a writ from the speaker of the respective house.

The general assembly shall not have power to infringe this constitution, to abridge the civil rights of any person on account of his religious belief, to restrain him from professing and supporting that belief, or to compel him to contributions, other than those he shall
have personally stipulated for the support of that or any other, to
ordain death for any crime but treason or murder, or military
offences; to pardon, or give a power of pardoning, persons duly
convicted of treason or felony, but instead thereof they may sub-
stitute one or two new trials, and no more; to pass laws for punishing
actions done before the existence of such laws; to pass any bill of
attainder of treason or felony; to prescribe torture in any case what-
ever; nor to permit the introduction of any more slaves to reside in
this State, or the continuance of slavery beyond the generation
which shall be living on the thirty-first day of December, one tho-
sand eight hundred; all persons born after that day being hereby
declared free.

The general assembly shall have power to sever from this State
all or any parts of its territory westward of the Ohio, or of the
meridian of the mouth of the Great Kanahaway, and to cede to Con-
gress one hundred square miles of territory in any other part of this
State, so long as Congress shall hold their sessions therein, or in
any territory adjacent thereto, which may be tendered to them by
any other State.

They shall have power to appoint the speakers of their respective
houses, treasurer, auditors, attorney general, register, all general
officers of the military, their own clerks and serjeants, and no other
officers, except where, in other parts of this constitution, such
appointment is expressly given them.

The executive powers shall be exercised by a Governor, who shall
be chosen by joint ballot of both houses of assembly, and when
chosen shall remain in office five years, and be ineligible a second
time. During his term he shall hold no other office or emolument
under this State, or any other State or power whatsoever. By execu-
tive powers, we mean no reference to those powers exercised under
our former government by the crown as of its prerogative, nor does
these be the standard of what may or may not be deemed the
rightful powers of the governor. We give them those powers only,
which are necessary to execute the laws (and administer the
government), and which are not in their nature either legislative or
judiciary. The application of this idea must be left to reason. We
do however expressly deny him the prerogative powers of erecting
courts, offices, boroughs, corporations, fairs, markets, ports, bea-
cons, light-houses, and sea-marks; of laying embargoes, of sub-

ishing precedence, of retaining within the State, or recalling to it
any citizen thereof; and of making denizens, except so far as he may
be authorized from time to time by the legislature to exercise any
of those powers. The power of declaring war and concluding peace,
of contracting alliances, of issuing letters of marque and reprisal; of
raising and introducing armed forces, of building armed vessels,
forts, or strongholds, of coining money or regulating its value, of
regulating weights and measures, we leave to be exercised under the
authority of the confederation; but in all cases respecting them
which are out of the said confederation, they shall be exercised by
the governor, under the regulation of such laws as the legislature
may think it expedient to pass.

The whole military of the State, whether regular, or of militia,
shall be subject to his directions; but he shall leave the execution of
those directions to the general officers appointed by the legislature.

His salary shall be fixed by the legislature at the session of the
assembly in which he shall be appointed, and before such appoint-
ment be made; or if it be not then fixed, it shall be the same which
his next predecessor in office was entitled to. In either case he may
demand it quarterly out of any money which shall be in the public
treasury; and it shall not be in the power of the legislature to give
him less or more, either during his continuance in office, or after
he shall have gone out of it. The lands, houses, and other things
appropriated to the use of the governor, shall remain to his use
during his continuance in office.

A Council of State shall be chosen by joint ballot of both houses of
assembly, who shall hold their offices seven years, and be ineligible a
second time, and who, while they shall be of the said council, shall
hold no other office or emolument under this State, or any other
State or power whatsoever. Their duty shall be to attend and advise
the governor when called on by him, and their advice in any case
shall be a sanction to him. They shall also have power, and it shall
be their duty, to meet at their own will, and to give their advice,
though not required by the governor, in cases where they shall think
the public good calls for it. Their advice and proceedings shall be
entered in books to be kept for that purpose, and shall be signed as
approved or disapproved by the members present. These books
shall be laid before either house of assembly when called for by
them. The said council shall consist of eight members for the
present; but their numbers may be increased or reduced by the legislature, whenever they shall think it necessary; provided such reduction be made only as the appointments become vacant by death, resignation, disqualification, or regular deprivation. A majority of their actual number, and not fewer, shall be a quorum. They shall be allowed for the present — each by the year, payable quarterly out of any money which shall be in the public treasury. Their salary, however, may be increased or abated from time to time at the discretion of the legislature; provided such increase or abatement shall not, by any ways or means, be made to affect either then, or at any future time, anyone of those then actually in office. At the end of each quarter their salary shall be divided into equal portions by the number of days on which, during that quarter, a council has been held, or required by the governor, or by their own adjournment, and one of those portions shall be withheld from each member for every of the said days which, without cause allowed good by the board, he failed to attend, or departed before adjournment without their leave. If no board should have been held during that quarter, there shall be no deduction.

They shall annually choose a President, who shall preside in council in the absence of the governor, and who, in case of his office becoming vacant by death or otherwise, shall have authority to exercise all his functions, till a new appointment be made, as he shall also in any interval during which the governor shall declare himself unable to attend to the duties of his office.

The judicary powers shall be exercised by county courts and such other inferior courts as the legislature shall think proper to continue or to erect, by three superior courts, to wit, a Court of Admiralty, a general Court of Common Law, and a High Court of Chancery; and by one Supreme Court, to be called the Court of Appeals.

The judges of the high court of chancery, general court, and court of admiralty, shall be four in number each, to be appointed by joint ballot of both houses of assembly, and to hold their offices during good behavior. While they continue judges, they shall hold no other office or emolument, under this State, or any other State or power whatsoever, except that they may be delegated to Congress, receiving no additional allowance.

These judges, assembled together, shall constitute the Court of Appeals, whose business shall be to receive and determine appeals from the three superior courts, but to receive no original causes, except in the cases expressly permitted herein.

A majority of the members of either of these courts, and not fewer, shall be a quorum. But in the Court of Appeals nine members shall be necessary to do business. Any smaller numbers however may be authorized by the legislature to adjourn their respective courts.

They shall be allowed for the present — each by the year, payable quarterly out of any money which shall be in the public treasury. Their salaries, however, may be increased or abated, from time to time, at the discretion of the legislature, provided such increase or abatement shall not, by any ways or means, be made to affect, either then, or at any future time, any one of those then actually in office. At the end of each quarter their salary shall be divided into equal portions by the number of days on which, during that quarter, their respective courts sat or should have sat, and one of these portions shall be withheld from each member for every of the said days which, without cause allowed good by his court, he failed to attend, or departed before adjournment without their leave. If no court should have been held during the quarter, there shall be no deduction.

There shall, moreover, be a Court of Impeachments, to consist of three members of the Council of State, one of each of the superior courts of Chancery, Common Law, and Admiralty, two members of the house of delegates and one of the Senate, to be chosen by the body respectively of which they are. Before this court any member of the three branches of government, that is to say, the governor, any member of the council, of the two houses of legislature, or of the superior courts, may be impeached by the governor, the council, or either of the said houses or courts, and by no other, for such misbehavior in office as would be sufficient to remove him therefrom; and the only sentence they shall have authority to pass shall be that of deprivation and future incapacity of office. Seven members shall be requisite to make a court, and two-thirds of those present must concur in the sentence. The offences cognizable by this court shall be cognizable by no other, and they shall be triers of the fact as well as judges of the law.

The justices or judges of the inferior courts already erected, or hereafter to be erected, shall be appointed by the governor, on advice of the council of State, and shall hold their offices during
good behavior, or the existence of their courts. For breach of the
good behavior, they shall be tried according to the laws of the land,
before the Court of Appeals, who shall be judges of the fact as well
as of the law. The only sentence they shall have authority to pass
shall be that of deprivation and future incapacity of office, and two-
thirds of the members present must concur in this sentence.

All courts shall appoint their own clerks, who shall hold their
offices during good behavior, or the existence of their court; they
shall also appoint all other attending officers to continue during
their pleasure. Clerks appointed by the supreme or superior courts
shall be removable by their respective courts. Those to be appointed
by other courts shall have been previously examined, and certified
to be duly qualified, by some two members of the general court,
and shall be removable for breach of the good behavior by the Court
of Appeals only, who shall be judges of the fact as well as of the law.
Two-thirds of the members present must concur in the sentence.

The justices or judges of the inferior courts may be members of
the legislature.

The judgment of no inferior court shall be final, in any civil case,
of greater value than fifty bushels of wheat, as last rated in the
general court for setting the allowance to the members of the general
assembly, nor in any case of treason, felony, or other crime which
should subject the party to infamous punishment.

In all causes depending before any court, other than those of
impeachments, of appeals, and military courts, facts put in issue
shall be tried by jury, and in all courts whatever witnesses shall give
testimony 

testimony vinculae in open court, wherever their attendance can
be procured; and all parties shall be allowed counsel and compulsory
process for their witnesses.

Fines, amercements, and terms of imprisonment left indefinite
by the law, other than for contempts, shall be fixed by the jury,
triers of the offence.

The governor, two councillors of State, and a judge from each of
the superior Courts of Chancery, Common Law, and Admiralty,
shall be a council to revise all bills which shall have passed both
houses of assembly, in which council the governor, when present,
shall preside. Every bill, before it becomes a law, shall be represen-
ted to this council, who shall have a right to advise its rejec-
tion, returning the bill, with their advice and reasons in writing, to

the house in which it originated, who shall proceed to reconsider
the said bill. But if after such reconsideration, two-thirds of the
house shall be of opinion that the bill should pass finally, they shall
pass and send it, with the advice and written reasons of the said
Council of Revision, to the other house, wherein if two-thirds also
shall be of opinion it should pass finally, it shall thereupon become
law, otherwise it shall not.

If any bill, presented to the said council, be not, within one week
(exclusive of the day of presenting it) returned by them, with their
advice of rejection and reasons, to the house wherein it originated,
or to the clerk of the said house, in case of its adjournment over
the expiration of the week, it shall be law from the expiration of the
week, and shall then be demandable by the clerk of the House of
Delegates, to be filed of record in his office.

The bills which they approve shall become law from the time of
such approbation, and shall then be returned to, or demandable by,
the clerk of the House of Delegates, to be filed of record in his
office.

A bill rejected on advice of the Council of Revision may again be
proposed, during the same session of assembly, with such alterations
as will render it conformable to their advice.

The members of the said Council of Revision shall be appointed
from time to time by the board or court of which they respectively
are. Two of the executive and two of the judiciary members shall
be requisite to do business; and to prevent the evils of non-
attendance, the board and courts may at any time name all, or so
many as they will, of their members, in the particular order in which
they would choose the duty of attendance to devolve from preceding
to subsequent members, the preceding failing to attend. They shall
have additionally for their services in this council the same allow-
ance as members of assembly have.

The confederation is made a part of this constitution, subject to
such future alterations as shall be agreed to by the legislature of this
State, and by all the other confederating States.

The delegates to Congress shall be five in number; any three of
whom, and no fewer, may be a representation. They shall be
appointed by joint ballot of both houses of assembly for any term
not exceeding one year, subject to be recalled, within the term, by
joint vote of both the said houses. They may at the same time be
members of the legislative or judiciary departments, but not of the executive.

The benefits of the writ of habeas corpus shall be extended, by the legislature, to every person within this State, and without fee, and shall be so facilitated that no person may be detained in prison more than ten days after he shall have demanded and been refused such writ by the judge appointed by law, or if none be appointed, then by any judge of a superior court, nor more than ten days after such writ shall have been served on the person detaining him, and no order given, on due examination, for his remandment or discharge.

The military shall be subordinate to the civil power.

Printing presses shall be subject to no other restraint than liableness to legal prosecution for false facts printed and published.

Any two of the three branches of government concurring in opinion, each by the voice of two-thirds of their whole existing number, that a convention is necessary for altering this constitution, or correcting breaches of it, they shall be authorized to issue writs to every county for the election of so many delegates as they are authorized to send to the general assembly, which elections shall be held, and writs returned, as the laws have provided in the case of elections of delegates of assembly, mutatis mutandis, and the said delegates shall meet at the usual place of holding assemblies, three months after date of such writs, and shall be acknowledged to have equal powers with this present convention. The said writs shall be signed by all the members approving the same.

To introduce this government, the following special and temporary provision is made.

This convention being authorized only to amend those laws which constituted the form of government, no general dissolution of the whole system of laws can be supposed to have taken place; but all laws in force at the meeting of this convention, and not inconsistent with this constitution, remain in full force, subject to alterations by the ordinary legislature.

The present general assembly shall continue till the forty-second day after the last Monday of November in this present year. On the said last Monday of November in this present year, the several counties shall, by their electors qualified as provided by this constitution, elect delegates, which for the present shall be, in number, one for every — militia of the said county, according to the latest returns in possession of the governor, and shall also choose senatorial electors in proportion thereto, which senatorial electors shall meet on the fourteenth day after the day of their election, at the court house of that county of their present district which would stand first in an alphabetical arrangement of their counties, and shall choose senators in the proportion fixed by this constitution. The elections and returns shall be conducted, in all circumstances not hereby particularly prescribed, by the same persons and under the same forms as prescribed by the present laws in elections of senators and delegates of assembly. The said senators and delegates shall constitute the first general assembly of the new government, and shall specially apply themselves to the procuring an exact return from every county of the number of its qualified electors, and to the settlement of the number of delegates to be elected for the ensuing general assembly.

The present governor shall continue in office to the end of the term for which he was elected.

All other officers of every kind shall continue in office as they would have done had their appointment been under this constitution, and new ones, where new are hereby called for, shall be appointed by the authority to which such appointment is referred. One of the present judges of the general court, he consenting thereto, shall by joint ballot of both houses of assembly, at their first meeting, be transferred to the High Court of Chancery.

Ford III: 320–33

v.5 To Rabaut de St. Etienne

Paris, June 3, 1789

Sir,—After you quitted us yesterday evening, we continued our conversation (Monsr. de la Fayette, Mr. Short & myself) on the subject of the difficulties which environ you. The desirable object being to secure the good which the King has offered & to avoid the ill which seems to threaten, an idea was suggested, which appearing to make an impression on Monsr. de la Fayette, I was encouraged to pursue it on my return to Paris, to put it into form, & now to
send it to you & him. It is this, that the King, in a séance royale, should come forward with a Charter of Rights in his hand, to be signed by himself & by every member of the three orders. This charter to contain the five great points which the Résolutions of December offered on the part of the King, the abolition of pecuniary privileges offered by the privileged orders, & the adoption of the National debt and a grant of the sum of money asked from the nation. This last will be a cheap price for the preceding articles, and let the same act declare your immediate separation till the next anniversary meeting. You will carry back to your constituents more good than ever was effected before without violence, and you will stop exactly at the point where violence would otherwise begin. Time will be gained, the public mind will continue to ripen & to be informed, a basis of support may be prepared with the people themselves, and expedients occur for gaining still something further at your next meeting, & for stopping again at the point of force. I have ventured to send to yourself & Monsieur de la Fayette a sketch of my ideas of what this act might contain without endangering any dispute. But it is offered merely as a canvas for you to work on, if it be fit to work on at all. I know too little of the subject, & you know too much of it to justify me in offering anything but a hint. I have done it too in a hurry: insomuch that since committing it to writing it occurs to me that the 4th article may give alarm, that it is in a good degree included in the 4th, and is therefore useless. But after all what excuse can I make, Sir, for this presumption? I have none but an unmeasurable love for your nation and a painful anxiety lest Despotism, after an unaccepted offer to bind it's own hands, should seize you again with tenfold fury. Permit me to add to these very sincere assurances of the sentiments of esteem & respect with which I have the honor to be, Sir, Your most obedient & most humble servt.

Proposed Charter for France

June 3, 1789

A Charter of Rights, solemnly established by the King and Nation.

1. The States General shall assemble, uncalled, on the first day of November, annually, and shall remain together so long as they shallsee cause. They shall regulate their own elections and proceedings, and until they shall ordain otherwise, their elections shall be in the forms observed in the present year, and shall be triennial.

2. The States General alone shall levy money on the nation, and shall appropriate it.

3. Laws shall be made by the States General only, with the consent of the King.

4. No person shall be restrained of his liberty, but by regular process from a court of justice, authorized by a general law. (Except that a Noble may be imprisoned by order of a court of justice, on the prayer of twelve of his nearest relations.) On complaint of an unlawful imprisonment, to any judge whatever, he shall have the prisoner immediately brought before him, and shall discharge him, if his imprisonment be unlawful. The officer in whose custody the prisoner is, shall obey the orders of the judge, and both judge and officer shall be responsible, civilly and criminally, for a failure of duty herein.

5. The military shall be subordinate to the civil authority.

6. Printers shall be liable to legal prosecution for printing and publishing false facts, injurious to the party prosecuting; but they shall be under no other restraint.

7. All pecuniary privileges and exemptions, enjoyed by any description of persons, are abolished.

8. All debts already contracted by the King, are hereby made the debts of the nation, and the faith thereof is pledged for their payment in due time.

9. Eighty millions of livres are now granted to the King, to be raised by loan, and reimbursed by the nation; and the taxes heretofore paid, shall continue to be paid to the end of the present year, and no longer.

10. The States General shall now separate, and meet again on the first day of November next.

Done, on behalf of the whole nation, by the King and their representatives in the States General, at Versailles, this — day of June, 1789.

Signed by the King, and by every member individually, and in his presence.

Ford v: 99–102