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A BANCROFTIAN INVENTION

In 1882 the Hon. George Bancroft published his *History of the Formation of the Constitution of the United States of North America* in two volumes. It was the crowning work of his life, and upon it great reliance has been placed. The vital part of the work is devoted to the proceedings of the Federal Convention of 1787, and, in his preface, the author explains how every door was opened to him when he was searching in private archives for unpublished sources of information. At the beginning of the second volume, he tells us that five plans of government were submitted to the Convention, each one of which he undertakes to describe. First comes the Virginia plan, May 29; second, the Charles Pinckney plan, May 29; third, "the plan of Connecticut," certainly "before 19 June;" fourth, the New Jersey plan, June 15; fifth; the Alexander Hamilton plan, June 18. At the opening of chapter two, Vol. II, he gives special importance to his so-called plan of Connecticut, saying: "The project which in importance stands next to that of Virginia is the series of propositions of Connecticut. It consisted of nine sections, and in the sessions of the convention received the unanimous support of the Connecticut delegation, particularly of Sherman and Ellsworth. It was framed while they were still contriving amendments of the Articles of Confederation." At that point, he adds, in the note in which he attempts to uphold his strange assertion: "Therefore, certainly, before 19 June, and probably soon after the arrival of Sherman in Philadelphia. The Connecticut members were not chosen till Saturday the twelfth of May. Ellsworth took his seat the twenty-eighth of May, Sherman the thirtieth, and Johnson the second of June. For the

plan, see the *Life of Roger Sherman by Jeremiah Evarts, in Biography of the Signers, Ed. of 1828, p. 42-44.*". Again at the opening of chapter five he says: "Startled by the vagueness of language in the Virginia resolve, Sherman, *who with his colleagues had prepared a series of amendments to the old Articles of Confederation, proposed,*" etc. In support of that assertion he appends this note: *"Life of Sherman by Jeremiah Evarts, II, 42, in the Lives of the Signers."* Again in his preface (VI) he says: "From Connecticut, valuable papers of Roger Sherman came to me through Professor Simeon E. Baldwin, of New Haven: though nothing equal in importance to the document which embodies nine articles of amendments of the confederation, and which is *preserved only in Sherman's Life, by Jeremiah Evarts.*". It is, therefore, manifest that Bancroft was completely possessed by the illusion that a certain paper found among Roger Sherman's manuscripts after his death, embodying "nine articles of amendments of the confederation," which were never presented anywhere, was actually presented in the Federal Convention, certainly before June 19, as "the plan of Connecticut." He says that "it consisted of nine sections, and in the sessions of the convention received the unanimous support of the Connecticut delegation, particularly of Sherman and Ellsworth." Three times he cites the same authority to support his assertion—*Sherman's Life by Jeremiah Evarts* —in that place only, he says, is the document preserved. A document does appear there in the following terms:

"That in addition to the legislative powers vested in Congress by the Articles of Confederation, the legislature of the United States be authorized to make laws to regulate the commerce of the United States with foreign nations, and among the several states in the Union; to impose duties on foreign goods and commodities imported into the United States, and on papers passing through the post office, for raising a revenue, and to regulate the collection thereof, and apply the same to the payment of the debts due from the United States, and for supporting the government, and other necessary charges of the Union.

"To make laws binding on the people of the United States, and on the courts of law, and other magistrates and officers, civil and military, within the several states, in all cases which concern the common interests of the United States: but not to interfere with the government of the individual states, in mat-

ters of internal police which respect the government of such states only, and wherein the general welfare of the United States is not affected.

"That the laws of the United States ought, as far as may be consistent with the common interest of the Union, to be carried into execution by the judiciary and executive officers of the respective states, wherein the execution thereof is required.

"That the legislature of the United States be authorized to institute one supreme tribunal, and such other tribunals as they may judge necessary for the purpose aforesaid, and ascertain their respective powers and jurisdiction.

"That the legislatures of individual states ought not to possess a right to emit bills of credit for a currency, or to make any tender laws for the payment or discharge of debts or contracts, in any manner different from the agreement of the parties, unless for payment of the value of the thing contracted for, in current money, agreeable to the standard that shall be allowed by the legislature of the United States, or in any manner to obstruct or impede the recovery of debts, whereby the interests of foreigners, or the citizens of any other state may be affected.

"That the eighth article of the confederation ought to be amended, agreeable to the recommendation of Congress of the ——— day of ———.

"That if any state shall refuse or neglect to furnish its quota of supplies, upon requisition made by the legislature of the United States, agreeably to the articles of the Union, that the said legislature be authorized to order the same to be levied and collected of the inhabitants of such state, and to make such rules and orders as may be necessary for that purpose.

"That the legislature of the United States have power to make laws for calling forth such aid from the people, from time to time, as may be necessary to assist the civil officers in the execution of the laws of the United States; and annex suitable penalties to be inflicted in case of disobedience.

"That no person shall be liable to be tried for any criminal offence, committed within any of the United States, in any other state than that wherein the offence shall be committed, nor be deprived of the privilege of trial by a jury, by virtue of any law of the United States."

"In 1823, a brief memoir of Roger Sherman was published in Sanderson's *Lives of the Signers of the Declaration of Independence.* Gov. Roger S. Baldwin, a grandson of Roger Sherman, in a letter dated May 2, 1855, says of this memoir: 'It was prepared in part by Robert Waln, Jr., of Philadelphia, with whom I was in correspondence, and in part by the late Jeremiah Evarts, Esq., of Boston (father of William M. Evarts, Esq., of New York), who married a daughter of Mr. Sherman, and gives, I think, a just view of his life and character and public services.' Robert Waln, Jr., was, when this memoir was prepared, the editor of Sanderson's *Lives.*" (*The Life of Roger Sherman by Lewis Henry Boutell, Chicago, 1896, preface, V.*) In the memoir of 1823, which appears in Sanderson's *Lives* and which Bancroft incorrectly attributes to Jeremiah Evarts alone, the following explanation is made as to the document in question: "A manuscript left among his papers, and containing a series of propositions prepared by him for the amendment of the old Articles of Confederation, the greater part of which are incorporated, in substance, in the new constitution, displays the important part which he acted in the general convention of 1787." Thus the only authority upon which Bancroft relies for "the plan of Connecticut" fails to give the slightest color to the idea that this document, found among Sherman's papers after his death, was ever presented by him in the Federal Convention, or made use of by him anywhere. Boutell, Sherman's latest biographer, in describing this paper, which he reprints, says: "*During the latter part of Mr. Sherman's service in the Continental Congress* he became strongly impressed with the necessity of a radical change in the Articles of Confederation. The following propositions found among his manuscripts were prepared by him, as embodying the amendments which he deemed necessary to be made to the (then) *existing government.*" As Sherman retired from the Continental Congress in November, 1784, it thus appears that the paper in question was prepared as a memorandum of his views as to the deficiences in the Articles of Confederation, *prior to that date.* And so when Bancroft says that this paper was prepared by Sherman and his colleagues between *June 15th and 19th, 1787,* he creates a fanciful structure which draws no support whatever from the only authority upon which he relies. In the somewhat detailed accounts given by Sherman's biographers of the noble part he

bore in the Federal Convention there is not a suggestion even that he ever presented on his own behalf, or on behalf of his state, any plan whatsoever. If anything more were necessary, the internal evidence contained in the paper itself should dispose of the whole matter. It shows upon its face that it was a mere memorandum and not a series of resolutions in the stereotyped form employed in the Virginia and New Jersey resolutions. So far no reference has been made to the best evidence. The Journal of the Federal Convention, which gives the texts with detailed accounts of the four plans actually presented, crushes by its silence, the assertion that any such thing as "the plan of Connecticut" was ever presented. It does not appear in the Journal that any such thing as "the plan of Connecticut" was ever offered at any time, by any body. Why should a plan to amend the Articles of Confederation in nine resolutions, have been presented by Sherman and Ellsworth between the 15th and 19th of June, after Patterson had introduced a most elaborate scheme for that purpose on the 15th of June? Patterson's first resolution reads as follows: "Resolved, That the Articles of Confederation ought to be so revised, corrected and enlarged, as to render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union." Such a proposal as Bancroft falsely attributes to the Connecticut delegation could have had no *raison d' être*—there is no place for such a thing in the record which denies its existence. Certainly if Madison should come from his grave he would be startled by this strange story of "the project which in importance stands next to that of Virginia." No such thing as "the plan of Connecticut" ever existed—there was no "Margery Daw." If it be necessary to explain how it was that so high an authority could have made such a blunder as to a matter of such vital importance, the following instances may be cited of mistakes equally emphatic as to matters of smaller importance. On p. 53 of Vol. II, Bancroft says: "Weary of supporting the New Jersey plan, Sherman pleaded for two houses of the national legislature and the equal vote of the states in one of them;" and in support of his text he cites *The Madison Papers, Gilpin Ed., p. 918.* When we read Sherman's speech, as there reported, we find that he made a diametrically opposite contention. "Mr. Sherman seconded and supported Mr. Lansing's motion. He admitted two branches to be necessary in the State

legislatures, *but he saw no necessity in a confederacy of States.* The examples were of a single council. Congress carried us through the war, and perhaps as well as any government could have done. * * * If another branch were to be added to Congress, to be chosen by the people, it would serve to embarrass." Again, when telling the story of the Connecticut Compromise, Bancroft (Vol. II, p. 62) says: "Abraham Baldwin, a native of Connecticut, a graduate of Yale College, for four years one of its tutors, a recent emigrant to Georgia from which state he was now deputy, stepped forth to the relief of Ellsworth, saying: 'The second branch ought to be the representation of property and ought not to be elected as the first'." When we turn to Baldwin's speech, thus quoted (*Madison Papers, p. 998*) we find that the friend, who is said to have "stepped forth to the relief of Ellsworth," began by saying "*he should vote against the motion of Mr. Ellsworth* though he did not like the resolution as it stood in the Report of the Committee of the Whole. He thought the second branch ought to be the representation of property and that, in forming it, therefore, some reference ought to be had to the relative wealth of their constituents, and to the principles on which the Senate of Massachusetts was constituted." Such were the reasons given by Baldwin for his vote against Ellsworth's motion.

No mawkish sentimentality for the memory of a dear old man should deter those who make a business of studying the history of our Federal Constitution from the effort to make that history square with the record. The time has come when the new generation of historical scholars and jurists, to whom this article is addressed, must be given to understand that the sources must all be re-examined by them, and the story rewritten in the light of a more careful and enlightened scholarship. In the days when the old or picturesque type of history, a species of portrait-painting, was in full vogue, Vertot, when offered new documents which stultified his narrative, scornfully put them aside with the declaration: "My siege is finished." In the same spirit, many of the older men, whose minds have ceased to be receptive and whose impressions as to the past have ossified, have attempted to put aside the great document, as authentic as the constitution itself, in which is embodied the invention by Pelatiah Webster of the unique federal system under which we now live. The eminent French

critic and his historian, Ch. V. Langlais, has said: "History is studied from documents. Documents are the traces which have been left of the thoughts and actions of men of former times. There is no substitute for a document: no documents, no history." Under the weight of the mighty document published by Pelatiah Webster, Feb. 16, 1783, and republished with copious notes in 1791, the nebulous and impossible theory that our existing constitution was a composite creation that sprang into being during the sessions of the Federal Convention, which actually worked only eighty-six days, has broken down. Before that convention there was really but one plan, and that was the plan drawn more than four years before by Connecticut's greatest son—Pelatiah Webster, born at Lebanon in 1725, and graduated at Yale College in 1746. And yet his own know him not. The so-called "plans" presented in the convention by the delegation from Virginia, by Charles Pinckney and by Alexander Hamilton were simply paraphrases, epitomes of the rounded scheme as worked out by the great architect more than four years before. Through those "plans," as conduits, passed the great invention which has revolutionized federal government throughout the world. The marvel is that the historians who are supposed to have explored the sources have never taken the pains to ask this simple and inevitable question—*from what common source did the draftsmen of the "plans" draw the path-breaking invention which was the foundation of them all?* Let it be said to the honor of those draftsmen that no one of them ever claimed to be the author of that invention. Neither Madison, nor Charles Pinckney, nor Sherman, nor Ellsworth, nor Hamilton, nor any of their biographers, so far as the writer has been able to ascertain, ever set up such a claim in behalf of any one of them. Let us hope that the rising generation in Connecticut will soon have the courage to look the luminous and epoch-making document of Feb. 16, 1783 squarely in the face, and then do justice to the memory of one predestined to immortality because he has made a larger personal contribution to the science of government than any other one individual in the history of mankind.

If the account of "the plan of Connecticut" in the Federal Convention as told by Bancroft is a Munchausen story, his narrative of "the Connecticut Compromise" is a splendid reality. On Feb. 16, 1783, Pelatiah Webster gave to his country and to

the world, as "the original thoughts of a private individual, dictated by the nature of the subject only," the four novel and basic principles upon which our existing Constitution now reposes.

1. The principle of a Federal Government operating directly on the individual, instead of upon the States as Corporations.

2. The division of a *Federal* Government into three departments—legislative, executive, and judicial.

3. The division of a *Federal* Legislative into two chambers on the bicameral plan.

4. A Federal Government with delegated powers, the residuum of power remaining in the States. When in 1775 Benjamin Franklin made the first draft of our first Federal Constitution, embodied in the Articles of Confederation,* he vested the entire legislative power in the one-chamber assembly known as the Continental Congress. Down to that time, the bicameral, or two-chamber plan, had never been applied to the organization of a Federal assembly. When Webster ventured to suggest a departure from the one-chamber plan, as old as the Greek leagues, he had of course before his eyes the bicameral, or two-chamber, Parliament of England. The most critical task which the Convention of 1787 was called upon to perform was the adjustment of the bicameral plan to the organization of a federal legislature. As the experiment had never been tried before, there was no precedent in history which could be looked to for light or guidance. Webster had suggested that the thing be done. He contented himself with saying "that the Congress shall consist of two chambers, an upper and a lower, or senate and commons, with the concurrence of both necessary to every act; and that every State send one or more delegates to each house: this will subject every act to two discussions before two distinct chambers of men equally qualified for the debate, equally masters of the subject and of equal authority in the decision. These two houses will be governed by the same natural motives and interests, viz., the good of the commonwealth and the approbation of the people." On June 19 after the New Jersey

1 "It appears that as early as the 21st of July, 1775, a plan entitled 'Articles of Confederation and *Prepetual* Union of the Colonies' had been sketched by Dr. Franklin, the plan being on that day submitted by him to Congress, and though not copied into their Journals, remaining on their files in his handwriting."—The Madison Papers, Vol. II, p. 688, Gilpin Ed., 1841.

plan, whose central idea was the perpetuation of a one-chamber Federal Congress, had been riddled by Madison, it was rejected as a whole and the plan, proposing two chambers, based on the Virginia and Pinckney projects, as embodied in the report of June 13, was reported as a whole. That result was reached by the votes of the six national states (Va., Mass., Penn., N. C., S. C., Ga.) aided by the vote of Connecticut. When the resolutions of the national states, as embodied in the report of June 13, were considered *seriatim* in the Convention as distinguished from the Committee of the Whole, recurred the irrepressible conflict of interest between the smaller and larger states which first arose when, on June 11, a motion that each state should have an equal vote in the Senate was defeated. It was then resolved that the representation in the second branch should be the same as in the first. On that day Sherman and Ellsworth had stood forth as the champions of the smaller states. "Mr. Sherman moved, that a question be taken, whether each state shall have one vote in the second branch. Everything, he said, depended on this. The smaller states would never agree to the plan on any other principle than equality of suffrage in this branch. Mr. Ellsworth seconded the motion." After a prolonged and fiery struggle, in the course of which Gouveneur Morris denounced the states as serpents whose teeth should be drawn, and the skeptic Franklin appealed to the power of prayer, the smaller states won the victory through the wise and noble act, the writer is proud to say, of his native state of North Carolina. When on Monday, July 16, the question was taken on the amended report which included an equality of votes in the Senate, the six southern states were present and only four of the northern. Strong and Gerry, offsetting the resolute King and Gorman, pledged Massachusetts at least to neutrality, while Connecticut, New Jersey, Delaware and Maryland, standing like a stone wall, refused to surrender. At that critical and dramatic moment, when all was to be won or lost, North Carolina broke away from her great associates and gave a majority of one to the smaller states. Bancroft tells us with genuine pathos: "From the day when every doubt of the right of the smaller states to an equal vote in the Senate was granted, they—so I received it from the lips of Madison and so it appears from the records—exceeded all others in zeal for granting power to the general government. Ellsworth became one of

its strongest pillars. Patterson, of New Jersey, was for the rest of his life a federalist of federalists."

Such were the precious fruits of the Connecticut Compromise. The one great gap in the otherwise complete plan of a Federal Constitution drawn by Connecticut's immortal son, Pelatiah Webster, Feb. 16, 1783, was filled up, under the lead of the Connecticut delegation, in June and July, 1787! When the sons of Connecticut gain courage enough to claim their own, by coupling these two supreme achievements together, that great state, with Yale University as the nucleus of light, will be able to indulge in a debauch of glory. In the meantime, the writer is willing to be patient while he exhorts them to exchange baseless myths for documentary history. Nothing can be more pathetic or more amusing than the scornful disdain with which some old veteran, who has accepted without doubt and without investigation the Munchausen story of "the plan of Connecticut," rejects the contents of the epoch-making document of Feb. 16, 1783, despite the fact that that document is just as authentic as the Constitution itself! *Hannis Taylor.*