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CHARLES PINCKNEY: FATHER OF THE CONSTITUTION?

S. SIDNEY ULMER*

In 1952 E. S. Corwin, that prolific and respected commentator on the Constitution and its ramifications, wrote the following words:

As to Madison's paternity of the Constitution . . . I think that if there had to be a Father of the Constitution, in order to gratify the father complex of the American people, [James] Madison was probably the most eligible candidate.¹

This, of course, is not startling revelation. It shocks neither our values nor our previous beliefs. Every school child and every scholar alike is aware of Madison's alleged paternal relationship to the Constitution. But the word "alleged" is used advisedly for the basis of the claim is not immediately clear.

The term "Father" in this context implies "responsibility for" and in the non-biological sense is usually interpreted to mean "the founder or author of". As applied to the birth of a basic law the implication is that the document in question was either (1) written by a particular individual or (2) resulted primarily from the work of an individual. The first interpretation is unacceptable since the mere number of provisions contributed by delegates other than Madison would characterize the Constitution as illegitimate. The latter interpretation, however, would seem at first blush to be suitable. And indeed this is a commonly accepted view of Madison's relationship to the Constitution. But in fact this view is tenable only if restricted even further. Such limitation becomes necessary in the absence of evidence showing Madison to be the leading framer, quantitatively or qualitatively, of specific provisions of the Constitution.

The Constitution, after all, was written by men, not Gods, and is composed of discrete and interrelated provisions. In most cases the authorship of the various components can be determined. It seems reasonable to suggest that a major proof

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of individual influence in the framing of the document rests in the determination of the constituent parts of the Constitution contributed by each of the convention delegates. Moreover it is useful to know who wrote what if intent is to play a meaningful role in constitutional interpretation. Emphasis upon the importance of individual contributions characterizes the view apparently taken in 1821 by Rufus King and others that Charles Pinckney ought to have more credit "for the Constitution . . . than any other man in America." And Supreme Court Justice William Johnson thought that Pinckney "more than any other member or man" ought to be considered the "Author" of the Federal Constitution.  

In this connection it is of interest to note that several, if not all, of the members of the Supreme Court seemingly agreed with the Johnson view. In a letter to Robert Y. Hayne in 1821 Pinckney relates that Johnson came up to him in the House of Representatives and declared:

Do you know I have been strenuously defending your unquestionable right since I saw you in repeating in a large company . . . among the Judges of the Supreme Court and others that you more than any other member or man ought to be considered as the Author of the Federal Conventions [i. e., Constitution] & I had to produce the Journal of the Convention to do it.  

The Supreme Court at the time was composed of Gabriel Duval, Joseph Story, Thomas Todd, Henry B. Livingston, John Marshall and Bushrod Washington, in addition to Johnson.

While we do not know which of these distinguished Justices were present in the gathering which Johnson convinced of Pinckney's major role it perhaps included the great John Marshall and Joseph Story. Certainly Marshall's nationalistic opinions in the period 1820-1835, a period in which Madison's notes were not available, were entirely consonant with the relatively nationalistic tenor of Pinckney's writings and speeches in the 1787 period. Marshall possibly discovered an
important source of materials on the intentions of the framers in the work of one who made a major contribution to the 1787 document.

The discrepancy between the commonly accepted view typified by Corwin's assertion and the position taken by some of the contemporaries of Madison and Pinckney suggests that the role of Charles Pinckney has not been properly assessed while that of Madison has, perhaps, been exaggerated. This paper is restricted to an analysis of the Pinckney role since the writing devoted to Madison is already quite massive. An effort to determine the specific components of the Constitution attributable to Charles Pinckney will be preceded by an examination of some of the controversies revolving around the Pinckney plan of government, since it is largely due to these controversies that the role of Pinckney in our constitutional development has been beclouded. These controversies have resulted from the fact that the original Pinckney plan of government submitted to the Convention in 1787 disappeared sometime between its referral to the Committee of Detail and the publication of the Journal of the Convention by John Quincy Adams in 1819. In 1818, upon request, Pinckney sent Adams a copy of a rough draft which Pinckney supposed to be substantially the same as that presented to the Convention in 1787. This draft was subsequently published in the Journal and was generally accepted as an authentic copy of the original Pinckney plan of government. Beginning in 1830 James Madison developed over a period of several years a series of charges that the 1818 draft as published in the Journal was not a substantial copy of the original paper. An analysis of Madison's arguments has appeared in a previous issue of this Quarterly.9

Attention here is focused on the work of other critics of the 1818 draft. The position taken by some of these critics is based on essentially the same factual information available to Madison. Later critics, however, have had access to additional materials which may give added meaning to their comments. Pinckney's true role as a constitutional father can emerge only after a consideration of the role assigned to him


by his critics as reflected in their evaluation of the 1818 draft and the controversies related to it.

CHARLES PINCKNEY’S CRITICS

One of Pinckney’s early detractors is reputed to have been Rufus King. Max Farrand has written that “Only a few of the members of the Convention were still living when the Journal was published in 1819, but two of those, King and Madison, expressed privately their conviction that the document printed in the Journal was not the same as that originally presented by Pinckney in 1787.” Investigation, however, does not bear out this contention.

Jared Sparks tells us that after spending April 25, 1830 “most agreeably” at Mr. Madison’s he paid a visit on May 4th to Mr. Adams. Sparks’ Journal for that day contains the following sentences:

I mentioned to Mr. Adams [J. Q.] what Mr. Madison had said to me respecting Charles Pinckney’s draft of a Constitution . . . Mr. Adams said he spoke once to Mr. Rufus King on the subject of the draft, who replied that Mr. Pinckney presented a draft, or a sketch of some sort, at the beginning of the convention, which went with other papers to a committee, and was never afterwards heard of. This accords with what Mr. Madison told me.11

Adams in his Memoirs under date of May 4 in relating his conversation with Sparks said:

I told Mr. Sparks that Rufus King had spoken to me of C. Pinckney’s paper precisely in the same manner as he says Mr. Madison now does; that it was a paper to which no sort of attention was paid by the Convention, except that of referring it to the committee. . . . 12

In a letter to Madison on May 5 Sparks said to Madison:

Mr. Adams mentioned the draft once to Mr. Rufus King, who said he remembered such a draft, but that it went to a committee with other papers, and was never heard of afterwards. Mr. King’s views of the subject, as far as I could collect them from Mr. Adams, were precisely such as you expressed.13

11. 1, ADAMS, LIFE AND WRITINGS OF JARED SPARKS, 560-564 (1893); Id. at vol. 2, 31-36; 3 FARRAND 481.
12. Printed in 3 FARRAND 482.
13. Ibid.
Several questions suggest themselves in respect to this episode. First, did Mr. King or Mr. Adams raise the question of the Pinckney draft in their reported conversation? Second, did Mr. King agree with Madison that the 1818 paper was not as represented and thus become the second member of the 1787 Convention to question the paper? Third, did Rufus King know the contents of the original Pinckney draft?

In respect to the first question Mr. Adams' entry only states that "Rufus King had spoken to me." But Sparks entry says "Mr. Adams said he spoke once to Mr. Rufus King" and his letter states that "Mr. Adams mentioned the draft once to Mr. Rufus King." It is likely that Mr. Adams would be more interested in raising the issue because of his efforts in 1818 and 1819 to get the journal ready for publication. It is not known when the conversation between Adams and King took place but it probably occurred between 1817, when Adams became Secretary of State and 1819, when Adams published the Pinckney paper with the official journal. It is known that it occurred prior to 1827, the year of King's death. It can only be said that Adams probably brought the matter up. If so, the inference that King thought the paper spurious is weakened. This leads to the second question — did King actually agree with Madison on this point? It has been interpreted in this manner by Farrand. Such an interpretation rests solely on the three sources cited above. A close reading, however, makes it somewhat less than absolute, that such an interpretation is a correct one. Adams was only specific with Sparks in telling him that King remembered the draft and that it had gone to a committee and was not later heard from. Adams in his Memoirs, while stating that King spoke of the paper in precisely the same manner as Madison did not indicate that he was referring to the manner in which Madison questioned the legitimacy of the document. Indeed, as if to explain this same manner, he said, after a semi-colon, "that it was a paper to which no sort of attention was paid by the Convention, except that of referring it to the committee..." And Sparks' qualification of "Mr King's views of the subject" by "as far as I could collect them from Mr Adams" in conjunction with the above evidence warrants the contention that it is less than certain that King ever questioned the legitimacy of the paper submitted by Pinckney in 1818.
This contention is considerably strengthened by Charles Pinckney’s assertion in a letter that after the publication of the official journal of the 1787 Convention “Mr. King . . . congratulated me on the general sentiment which seemed to prevail” that—

I had been not only the first, but the only member that had ever submitted a complete Plan to the Convention, & as the Constitution as adopted was more than three fourths of it in the very words of my plan that therefore the Journal now proved & proved incontestably that I had, & ought to have more credit for the first thought & first plan & therefore for the Constitution itself than any other man in America.14

It is not likely that Rufus King would have congratulated Pinckney on his large contribution if the evidence for the contribution was, in King’s mind, spurious.

Farrand, therefore, appears to go too far when he asserts that Rufus King privately questioned the legitimacy of the 1818 paper.

As for question three, there is no evidence that King ever knew the content of the original Pinckney draft. He was present in the Convention on May 28 and on May 30 but there is no record of his activities on May 29, the day the plan was presented. If the original was laid before the House, as Madison said, there is no evidence that King took the trouble to read the paper. If the original was read to the House, as Yates claimed, and as additional evidence indicates, it is unlikely that King could remember thirty-two years later what he heard read on May 29, 1787. Again if King referred to the original plan, as Sparks reported, as a “sketch of some sort” the evidence is conclusive that he did not know the original Pinckney draft of a Constitution. It is well known that Pinckney presented the only “complete draft of a Constitution” in articles and sections. Pinckney’s own claim to this honor in the House of Representatives on February 13, 1821, is unchallenged.15

Between 1787 and 1900 five important books contained references to the Pinckney plan. The first of these was John Taylor of Caroline’s New Views of the Constitution published

15. Printed in 3 FARRAND 445.
in 1823.16 Taylor accepted the version of the Pinckney plan published by Adams in 1819 as authentic. In 1840 and 1859 John C. Hamilton published two volumes in which he limited himself to pointing out the discrepancies between the 1818 draft and the “Observations.”17 George Bancroft, as if pronouncing the final word on the original Pinckney plan declared in his 1885 work that in convention “no part of it was used, and no copy of it has been preserved.”18 The following year W. C. Rives in his Life and Times of James Madison indicated his satisfaction with Madison’s charges which he summed up and with which he agreed.19 Rives cited one additional discrepancy between a provision of the 1818 paper and a position taken by Pinckney in convention on September 7, 1787.

In 1895 two articles concerning the Pinckney plan appeared in the Nation. The first, by P. L. Ford, added nothing new but voiced strong criticism of Pinckney’s 1818 paper. Ford said, “—the fabricated draft . . . should be relegated to the repository of historical lies” — “instead of being quoted by our Supreme Court.”20 This referred to the opinion of Chief Justice Fuller handed down the month before in which he referred to the 1818 Pinckney draft as if it were authentic.21 As others before him, Ford tried to disprove the 1818 paper by the use of the “Observations.”22

The effort of P. L. Ford was followed by the publication of Pinckney’s letter of December 30, 1818, in the Nation by W. C. Ford. This letter had not been published previously. Of the letter Ford said: “Its contents are sufficient to throw

22. Ford is not careful in his use of the “Observations”. While the “speech” gives the Senate a four-year term, Ford gives such terms to the House of Delegates; the “speech” places the President at the head of the Home department but Ford gives this to a cabinet officer; the “speech” gives the President the power to appoint all officers but judges and foreign ministers but Ford says the President is given no appointing power; Ford mistakenly reports that the “speech” included a fugitive slave provision which he confused with a fugitive from justice clause; while Pinckney says “I thought it improper to fix the percentage of the impost . . .” etc. (3 Farrand 116), Ford says Pinckney placed a limitation on the percentage of impost.
considerable doubt upon the so called Pinckney draft, in certain details; it does establish the general accuracy of other parts.”\footnote{23} No new criticisms were added by either of the Fords.

A paper reflecting considerable research was published by Professor J. F. Jameson in the \textit{Annual Report of the American Historical Association, 1902}. One section of the paper is devoted to the Pinckney plan. Several points in this paper deserve comment in spite of the fact that the paper represents the best work yet done on this problem. Jameson cited Rufus King as having told John Quincy Adams “that it [the 1818 draft] was not genuine.”\footnote{24} From the evidence already adduced this is certainly less than a true statement. There is no evidence that King ever made such a statement. Jameson attempted to reconstruct the original plan. He described a unique method of determining, in part, the original Pinckney provisions:

There is one, and so far as now appears only one, secure method of recovering a part of them. We may be fairly certain that any provisions which Pinckney is found advocating, against the general opinion or against the clauses of the plan which the Committee of the Whole had adopted as the main basis of its discussion, are portions of his own plan, provided we find him advocating them during the next two weeks after its presentation. At later stages his moving an amendment or speaking in its favor is no clear evidence of this, for it is then possible that the process of debate may have suggested to his mind a new device or convinced him of the merit of one suggested by another.\footnote{25}

Perhaps others can be gleaned from some motions made by Pinckney late in July, from his opposition to impeachment of the President and his desire for property qualifications for Federal officials; but here we are treading on less secure ground, and certainly some of his motions of this period are contrary to his proposals of the first weeks. [July 20, 26.] Least of all can such a course of inference be pursued with regard to the numerous proposals which Pinckney made in the last

\footnote{23.} Ford, \textit{The Pinckney Draft}, \textit{The Nation} 398 (1895).
\footnote{24.} Jameson, \textit{Annual Report of the American Historical Association} 1902, at 114.
\footnote{25.} Jameson, \textit{op. cit. supra} at 117.
month of the Convention. [August 18, 20, September 14, 15.] 26

Thus Jameson did not deny to Pinckney, as did Mr. Madison and others, the right to change one's opinion which was so freely exercised by Benjamin Franklin and other delegates in the Convention. Jameson appreciated, as Madison and Rives did not, that conflicts between provisions in the 1818 draft and proposals made by Pinckney in convention "late in July" and "in the last month of the Convention" do not necessarily indicate the illegitimacy of the former. It is significant for Madison's objections that they are based on Pinckney's statements of June 6, July 20, August 8, August 11, and August 14. Inferences based on four of these five dates would be classified as weak. The inference added by Rives based on a proposal of September 7 must be classified as very weak since this date is within the "last month of the Convention."

Of the "Observations" Jameson thought that "considerable skepticism is justified." 27 There is no evidence the speech was ever delivered in convention. Jameson believed only "one paragraph, 28 was ever heard in Independence Hall." 29 The value of the "Observations" is as corroboratory evidence.

According to Jameson the 1818 paper is not free of error. He believed Pinckney had in his possession a printed copy of the draft of the Committee of Detail when he drew up his 1818 draft. In this connection he cited as Madison's "original conjecture" the view that Pinckney had found a copy of the plan reported by the committee, with interlined amendments, perhaps proposed by him, and at a distance of more than thirty years, had imagined it was his own plan. Jameson suggested that the first part of this conjecture can be accepted. This conclusion, for which Jameson did not cite a reference, is taken from an entry in the Memoirs of John Quincy Adams dated May 4, 1830. Adams got his information from Sparks to whom Madison made the remark. But Sparks reported the same conversation with Madison in his journal, of date April 19, 1830, in a quite different manner.

26. JAMESON, op. cit. supra at 120.
27. JAMESON, op. cit. supra at 120.
28. Next to last paragraph.
29. JAMESON, op. cit. supra note 24, at 121. No commentator appears to have noticed that Pinckney's "Observation" printed in 1789 contained several paragraphs taken verbatim from his speech before the New Jersey Legislature in 1786.
It appears that Adams misunderstood Sparks or confused the account in his memory before committing it to paper. Jameson, therefore, is not on solid ground in citing this as Madison's original conjecture. The members of the Convention were furnished with printed copies of the draft of the Committee of Detail. If Pinckney interlined such a printed draft he could not later think it his original draft or a copy of it.

Toward the conclusion of his research Jameson came upon a manuscript in the papers of James Wilson containing a "group of extracts from the Pinckney plan."30 From these extracts Jameson concluded that while there was no wholesale copying of the Pinckney plan by the Committee of Detail, considerable borrowing is evidenced. About forty provisions of the original Pinckney draft are found in the extracts noted above. Of these Jameson found—

No fewer than nineteen or twenty that are to be found in the Committee's report, but were not in the twenty-three resolutions referred to them at the beginning of their work, nor in the Virginia resolutions nor in those offered by Paterson. Taken together, they constitute a noteworthy contribution for the youngest delegate to have made, and show that the labor he spent in drawing up a plan before the Convention began its work was not expended in vain.31

Andrew C. McLaughlin, on the other hand, discovered among the papers of James Wilson a manuscript which he said is "—undoubtedly an outline of the plan of a constitution presented to the Federal Convention by Charles Pinckney May 29, 1787."32 This paper was published in 1904. By comparing the Wilson paper to the "Observations" and using the paper discovered by Jameson, McLaughlin concluded that Pinckney contributed "thirty-one or thirty-two provisions" to the Constitution.33 Moreover, he said, "It must not be assumed that we know all that Pinckney thus contributed to the fabric of the Constitution."34

30. JAMESON, op. cit. supra at 130.
31. JAMESON, op. cit. supra at 132. Pinckney was not the youngest delegate. The honor was Dayton's.
32. Sketch of Pinckney's Plan for a Constitution, 1787, 9 AMERICAN HISTORICAL REVIEW 735 (1904).
33. Id. at 741.
34. Ibid.
The first serious attempt to prove that the 1818 Pinckney draft was substantially the same as the original plan was undertaken in 1908 by C. C. Nott, one-time Chief Justice of the United States Court of Claims. In spite of certain obvious shortcomings Nott's analysis of Madison's charges constitutes a contribution to the study of the subject. Nott concluded that the original Pinckney plan was used for printer's copy and then destroyed.

Nott's work was followed by Hannis Taylor's *Origin and Growth of the American Constitution* published in 1911. Taylor declared that four so-called plans were presented to the Convention and that three (Patterson's resolutions the exception) were prepared prior to the Convention; that the Virginia plan was only a set of resolutions; that only Pinckney and Hamilton formulated finished schemes of federal government before the Convention met. The Pinckney plan, according to Taylor was the most important plan before the Convention. Taylor believed the 1818 draft to contain "certainly the substance of the original draft."

He discounted Madison's criticisms for two reasons: (1) Madison was a controversialist — he was "the draftsman of the Virginia Plan. It is undoubtedly his production both as to form and substance." (2) The Pinckney plan was drawn from a paper prepared by Pelatiah Webster in 1781. It was Webster, Taylor argued, who wrote the Constitution six years before the Convention met.

A volume devoted entirely to Pinckney appeared in 1937. The author, Andrew J. Bethea, puts the reader immediately on guard on page four where he asserts that: "Charles Pinckney was one of the first men in the whole country, if not the very first, to discern the inutility of the Articles of Confederation and to perceive the need" for an entirely new system of government. The serious questions raised by the

36. Taylor is mistaken. Hamilton wrote in a letter to Pickering, Sept. 16, 1803, "I drew up [the] plan of a Constitution ... while the convention was sitting. . . ." Printed in 3 Farrand 398.
38. Taylor, op. cit. supra at 561.
40. Pinckney was certainly not the first. Madison says that the calling of a Federal Convention was first proposed in 1781 by Pelatiah Webster. In July 1782 resolutions to the same effect were passed in the New York legislature. Bancroft thinks these resolutions were drafted by Hamilton.
methodology of the Bethea book tend to vitiate the conclusions drawn.41 But for completeness of the record Bethea believed the 1818 draft to be substantially the same as the original Pinckney plan.

In the same year a new edition of Max Farrand’s Records of the Federal Convention was issued. In this edition Mr. Farrand included a note on the 1818 Pinckney draft. Farrand repeated the criticisms of Madison and others adding nothing new to the collection. He cited the “Observations” to prove the 1818 paper faulty. The objections to this methodological tool have already been noted. In repeating the criticisms of the 1818 paper made by others, Farrand spoke in more positive terms than the critics he repeated. He concluded that the 1818 draft “does not represent Pinckney’s original plan with some additions and modifications.’ It does not even have Pinckney’s original plan as its basis.”42

Farrand is the only commentator to suggest that Pinckney’s working motive in the Convention was simply “a reform of the Articles of Confederation.”43 For substantiation of this view, Farrand cites the article by McLaughlin published in 1904. A resort to this article fails, however, to support Farrand’s assertion. While McLaughlin said that “it is fair perhaps to believe that his [Pinckney’s] work in the Federal Convention was but a continuation of his work in Congress,” he added, in the same article that the dreary winter preceding the Convention had probably “taught him . . . the need of changing the first principles of the system.”44 Pinckney thus arranged “for a better form of government.”45

Farrand, apparently, was not aware of McLaughlin’s statement on the Pinckney plan in his A Constitutional History of the United States published in 1935. McLaughlin asserted

BANCROFT, HISTORY OF THE FORMATION OF THE UNITED STATES OF AMERICA 38, 39 (1885). Hamilton was the first to propose in Congress that a convention take place, a desire he expressed April 1, 1783. On April 28, 1783, Congress appointed a committee on pending resolutions in favor of a general convention. Madison’s correspondence records him as favoring a convention as early as November 1784.

41. E. g. the use of secondary sources to establish Pinckney’s contributions in the 1787 Convention. One-third of the Constitutional provisions Bethea attributed to Pinckney can be found in either the Virginia resolutions, the Paterson resolutions, or were introduced by someone else in convention.
42. 3 FARRAND 604.
43. Id. at 602.
44. McLAUGHLIN, A CONSTITUTIONAL HISTORY OF THE UNITED STATES (1935).
45. Ibid.
in this work that the Pinckney plan "... proposed not mere amendments to the Confederation, but the establishment of a real government and one, at least in some particulars, endowed with powers and authority." 46

With the exception of Madison who has already been considered, what can be said of Pinckney's critics? A survey of the literature on Charles Pinckney and the Pinckney plan of government leaves one with several strong impressions. First of all Pinckney's critics have tended to lose perspective as a result of prejudice for or against Pinckney and his work. While some have contended he practically wrote the Constitution others have been constrained to show that he made virtually no contribution. The work of Jameson and McLaughlin constitute exceptions to this generalization.

A second impression is that those writers unfavorable to Pinckney and his work have tended to accept Madison's criticism of Pinckney's alleged shortcomings without resort to research on the points he raises. Repeatedly one encounters repetition of Madison's charges, some of which can be shown to be flimsy indeed. Those who have chosen to check Madison's research have too often been interested in proving Madison all wrong. Both viewpoints seem to this writer to be incorrect. While Madison is not wholly on sound ground in his accusations, some of his criticisms carry weight.

Finally one is impressed on the one hand with the thoroughness of Madison and on the other with the utter lack of originality on the part of those writers who take a similar position. With the exception of Rives, who raised a questionable point, not a single critic has come up with a criticism not previously made by Madison.

The above survey indicates that the true nature of the 1818 draft has not been sufficiently determined to warrant its serving as a cloud behind which Pinckney's role in American constitutional development has been obscured. It is possible that the 1818 paper contains a provision or two not in the original draft; it is certain that it contains many provisions of the original plan which were adopted in the Constitution. The attention which has been devoted to the 1818 draft has been concentrated on those provisions thought to be spurious but in the opinion of the writer there is only one im-

46. McLaughlin, op. cit. supra note 44, at 158.
portant component of the document about which serious questions can be raised. This provision pertains to election of the lower federal house by the people. It would not seem that this provision was contained in the original plan. But even though this inference be correctly drawn from the available evidence, the explanation for the discrepancy remains an open question.

**CHARLES PINCKNEY'S PROPOSALS EMBODIED IN THE CONSTITUTION**

Is it possible to determine the Pinckney proposals embodied in the Constitution? One has at his disposal the Jameson text of the Pinckney plan, the McLaughlin sketch of the Pinckney plan (both from manuscripts found among the James Wilson papers), the letter written by George Read on May 20, 1787, a reconstruction of the plan from all available sources by Max Farrand, the draft of the Committee of Detail, a description of a plan of government in the "Observations" of 1787, the Paterson resolutions, the Randolph resolutions, the 1818 Pinckney draft, and the Constitution of the United States. By a proper use of these documents, it is possible to determine with a high degree of probability the components of the Constitution contributed by Charles Pinckney.

**Resolutions and Papers Submitted to the Committee on Detail**

It will be recalled that on the 29th of May, 1787, Edmund Randolph proposed fifteen resolutions comprising the "Virginia Plan" of union. On the 20th of May the Convention resolved itself into a Committee of the Whole and debated Randolph's proposals until June 13. The result of that debate was nineteen resolutions which were henceforth reported to the Convention. Two days later William Paterson of New Jersey introduced nine resolutions which were debated until June 19 at which time the Convention voted seven to three to work toward the type of national government visualized in the Virginia resolutions. Debate continued and between the 19th and 26th of July the Convention drew up twenty-three "fundamental resolutions." On July 26 these were submitted to a five man Committee of Detail which was given ten days to draft a constitution. The Paterson resolutions and the Pinckney plan were referred to the same committee on the same day. As of this date the three afore-
mentioned documents constituted the entire collection of documents or resolutions or principles referred to the Committee for their guidance in drafting a Constitution. No other provisions were referred before the report of the Committee was made. Therefore it is from these documents that the draft of the Committee sprang and no other.

Pinckney Provisions Derived From His Draft. Some light might be thrown on the Pinckney contributions by working back from the Constitution, to the draft of the Committee and then to the paper from which the provision was originally derived. Proceeding in this manner it may be determined that there are at least nine provisions in the Constitution that are found in the draft of the Committee of Detail, the 1818 Pinckney plan, the Farrand reconstruction of the Pinckney plan, the Jameson text of the Pinckney plan and the McLaughlin sketch of the Pinckney plan but which are not found in either the Randolph resolutions in their original or amended form or in the Paterson resolutions.

These nine provisions are that the Legislature shall consist of (1) a House and (2) a Senate;47 (3) that the House shall exclusively possess the power of impeachment; (4) that the Legislature shall have the power to coin money, (5) to establish post offices, (6) to call forth the aid of the militia; (7) that no state shall keep troops or warships in time of peace;48 (8) that no state shall coin money; and (9) that the chief executive shall be called President. The last provision is also included in the copied plan in the possession of George Read in 1787, and in the letter written by Otto dated June 10, 1787.49

Then there are those provisions of the Constitution found in the Committee draft, the 1818 Pinckney plan, the Farrand reconstruction of the Pinckney plan and the Jameson text which are not included in the Randolph resolutions in their original or amended form or in the Paterson resolutions. They are (1) that each house shall choose its own presiding

47. The Senate is also described in Otto’s letter of June 10, 1787. 3 FARRAND 40.
48. The Jameson text gives exclusive power to raise an army and equip a navy to the Federal Legislature. In Farrand’s draft this reads no state to “keep a naval or land Force Militia excepted to be disciplined & according to the Regulations of the U. S.”, 3 FARRAND 605.
49. 3 FARRAND 20. Item eight is not included in the 1818 paper. Otto’s letter is known to describe certain provisions of Pinckney’s original draft.
officers, (2) its other officers; (3) that each house shall settle its own rule of proceedings;50 (4) that neither house shall have the power to adjourn for more than a specified number of days without the consent of the other; (5) that it shall be the duty of the President to inform the Legislature of the conditions of the United States; (6) that the President shall commission all officers; that the President shall be the Commander in Chief of (7) the army and (8) the navy of the United States; (9) that the President shall have the power to convene the Legislature under extraordinary conditions,51 and (10) prorogue the Legislature on certain occasions;52 and that Congress shall have the power of raising (11) an army and (12) a navy.

The significance of the above twenty-one provisions is enhanced by the fact that not one of them is contrary to the views of Pinckney as expressed in the first two weeks after the presentation of his plan, i. e., before he is likely to have changed his mind concerning the provisions of his plan.

In addition to the provisions already noted there are those provisions of the Constitution found also in the Committee draft, the 1818 Pinckney paper, the Farrand reconstruction and the McLaughlin sketch but not found in the Randolph resolutions in their original or amended form or in the Paterson resolutions.53

The following provisions are included in this category: (1) the provision relating to the time of election for lower house members; (2) the power of Congress to fix the standard of weights and measures; (3) the prohibition that no state may enter into a treaty; (4) the prohibition that no state may lay interfering duties; (5) full faith and credit between the states; (6) privileges and immunities of citizens;54 (7)

50. Not included in the 1818 draft.
51. Ibid.
52. Ibid.
53. Resolution 6 of Randolph's original fifteen and resolution 6 of the twenty-three submitted to the Committee of Detail on July 26 expressed the view that the National Legislature should possess the legislative powers of the old Congress. Article IX of the Articles of Confederation vested in the Congress some of the powers which Pinckney included in his plan of government. Pinckney freely admitted in his “Observations” his indebtedness to the Articles for some of his provisions. Other provisions of the plan he took from the New York Constitution. George Read wrote John Dickinson: “I am in possession of a copied draft of a Federal system intended to be proposed, if something nearly similar shall not precede it. Some of its principle features are taken from the New York system of government.” 3 FARRAND 25.
54. Pinckney claimed this provision as his on Feb. 13, 1821, on the
the surrender of criminals. Adding all the provisions noted, it can be said with a high degree of certainty that at least twenty-eight provisions of the Constitution can be traced directly to the Pinckney plan of government submitted to the Convention on May 29, 1787. Not a single one of these provisions can be found in the other resolutions referred to the Committee of Detail prior to its report on August 6. Every one of these twenty-eight provisions is found in one or the other or both of the manuscript sketches of the Pinckney plan in the handwriting of James Wilson; twenty-three of the twenty-eight clauses are described in the "Observations"; twenty-four of them are included in Pinckney's 1818 draft. Pinckney's claim to them seems to be conclusive.

Two other provisions known to be in the original Pinckney plan found their way into the Constitution. One of these, the clause giving Congress power to regulate interstate and foreign commerce is found in the Jameson text, the McLaughlin sketch and the Farrand reconstruction of the Pinckney plan and is likewise described in the "Observations" and the 1818 draft. This provision at the same time was not specifically included in the Randolph resolutions of May 29 but is found in the draft of the Committee of Detail. The provision to regulate commerce is specifically found in the Paterson resolutions. But Pinckney presented his plan on May 2955 some seventeen days before the introduction of the Paterson resolutions56 and thus the first specific suggestion along this line came from Pinckney.

A second provision from the original Pinckney plan which found its way into the Constitution was the very important clause establishing a single executive. The decision for a single as opposed to the plural executive suggested by Ran-
dolph was taken in convention June 4. The suggestion was first raised on the floor by Wilson and Pinckney on June 1, but three days earlier Pinckney’s plan containing the proposition was read to the assembled delegates. The clause is found in the Jameson text, the McLaughlin sketch, the Farrand reconstruction, the “Observations” and the 1818 draft. It is not found in Randolph’s resolutions of May 29 for Randolph envisaged a plural executive magistracy.

**Pinckney Provisions Derived From His Suggestions in Convention**

Finally, consideration may be given to the suggestions made by Charles Pinckney in the Convention debates. The components of the Constitution derived from this source may be classified as (1) those granting power to the central government and its officers; (2) those placing restrictions on the central government and its officers; and (3) those pertaining to state action. In the first group would be the power of Congress to establish uniform laws on bankruptcy, grant letters of marque and reprisal and secure certain rights to authors and inventors. Pinckney appears to have been the first to verbalize the need for uniform bankruptcy laws in the United States which he did in convention on August 29. His proposal was adopted on September 3. On August 18 Pinckney submitted a series of resolutions including the proposal to give Congress power to grant letters of marque and reprisal and to secure certain exclusive rights to authors and inventors. The extension of the judicial power of the United States to controversies to which the United States is a party is also attributable to Pinckney. The provision was agreed to on motion of Madison on August 27 but it only represented a better wording of Pinckney’s thirteenth resolution of August 20 which was adopted and reported by the Committee of Detail on August 22.

57. Id. at 97.
58. Id. at 65.
60. U. S. Const. Art. I § 8 cl. 11.
62. 2 Farrand 447.
63. Id. at 489.
64. U. S. Const. Art. III § 2 cl. 1.
65. 2 Farrand 430.
66. Id. at 342.
dent to call for advice from cabinet officers\(^6\) resulted in part from a Pinckney suggestion on August 18 that the President be given discretion to call for such advice or not as he pleased.\(^6\)

In the second category, we find certain significant limitations on the federal government and its officers. The limitations on Congressional power include the prohibition against appropriation of money to raise and support armies for a longer term than two years;\(^6\(0\) the conditional prohibition against the suspension of the Writ of Habeas Corpus;\(^7\(0\) and the prohibition against requiring a religious test as a qualification for federal office.\(^7\(1\) The first provision is derived from Pinckney's proposition on August 18 to restrain the Legislature from establishing a perpetual revenue\(^7\(2\) and his motion August 20 that "no grants of money shall be made by the legislature, for supporting military land forces for more than one year at a time."\(^7\(3\) This limitation was adopted on September 5 with two years substituted for one.\(^7\(4\) One of the thirteen propositions which Pinckney introduced on August 20 was substantially the same as the conditional prohibition against suspension of the Writ.\(^7\(5\) The proposition on religious tests definitely originated in Pinckney proposals of August 20\(^7\(6\) and August 30.\(^7\(7\) The provision was adopted on the latter date.

Charles Pinckney also contributed to the restrictions imposed upon federal officers. These contributions are reflected in (1) the prohibition against acceptance of other emoluments by a President during his term of office,\(^7\(8\) (2) the prohibition against acceptance of gifts or titles from foreign potentates by federal officers\(^7\(9\) and (3) the prohibition against a member of Congress holding another federal office created or for which the emoluments have been increased during the time

\(^6\) U. S. CONST. Art. II § 2 cl. 1.
\(^6\) 2 FARRAND 329.
\(^6\) U. S. CONST. Art. I § 8 cl. 12.
\(^6\) U. S. CONST. Art. I § 9 cl. 2.
\(^6\) U. S. CONST. Art. VI § 3.
\(^7\) 2 FARRAND 326.
\(^7\) Id. at 341.
\(^7\) Id. at 500.
\(^7\) Id. at 341.
\(^7\) Id. at 342.
\(^7\) Id. at 468.
\(^7\) U. S. CONST. Art. II § 1 cl. 7.
\(^7\) U. S. CONST. Art. I § 8 cl. 8.
for which the member was elected. The first of these components was adopted on motion of Rutledge on September 15 but one of Pinckney's resolutions of August 20 contained the gist of the provision. The second proposition is taken almost verbatim from Pinckney's motion of August 23 which was adopted on the same date. The third provision can be traced to Pinckney motions of August 14 and September 3. The provision was finally adopted on a motion by Williamson on the latter date which slightly amended the Pinckney proposals.

Finally the Pinckney contributions on the floor of the Convention pertaining to state action consists of one procedural and substantive proposition. The former established nine as the requisite number of states for ratification while the latter forbade states to impair the obligation of contracts. The adoption of nine as the magic number for purposes of ratification came on a motion by Mason but Charles Pinckney was the first to express the view in convention that nine was the best figure under the circumstances which he did on June 5. The prohibition against state impairment of the obligation of contracts was inserted by the Committee of Style but only after Charles Pinckney had expressed similar ideas in respect to national laws on August 18.

It can now be said with considerable certainty that to Pinckney's later suggestions in convention is owed the whole or part of thirteen additional clauses. When the thirty provisions of the Constitution contained in the Pinckney plan are added to the thirteen provisions resulting from Pinckney's Convention activities, one can conclude with a high degree of probability that Charles Pinckney contributed in whole or in part at least forty-three components to the United States Constitution. This determination has been made without reliance on the disputed paper of 1818 (although the paper

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81. 2 Farrand 626.
82. Id. at 342.
83. Id. at 389.
84. Id. at 284.
85. Id. at 489.
86. Id. at 495.
87. U. S. Const. Art. VII.
89. 2 Farrand 477.
90. 1 Farrand 123.
91. 2 Farrand 323.
contains twenty-six of the thirty provisions suggested as being in the original plan) or the "Observations" (although twenty-five of the thirty propositions from the plan are described therein) published by Pinckney after the close of the Convention. Thus the determination has been made without reliance on Pinckney himself.

SUMMARY AND CONCLUSIONS

One does not with facility draw final conclusions about the mystery of the Pinckney draft of a federal system of government. The original plan does not appear to be extant. The complete contents of the original plan, therefore, cannot be known with certainty. The paper published in 1819 was not the original draft. Beyond that very little can be said with any degree of certitude about the 1818 paper. Madison's objectivity as a critic in the matter is corrupted beyond repair by his personal interest in every aspect of the subject. Madison is an effective advocate but no man rightly can be a judge in his own case. The criticisms and suggestions thrown out by Madison must be weighed by others and judged by more detached minds. In no case should such a judgment be made by a man who "was prone to contradict himself and to shift positions quickly at the command of expediency."92

Other investigators have come to diverse conclusions. C. C. Nott and Hannis Taylor have concluded that the 1818 draft is substantially the same as the original plan. J. F. Jameson and Max Farrand conclude to the contrary. Jameson says "It is not possible to say that Pinckney answered Adams' request by sitting down and copying the printed report of the Committee of Detail, paraphrasing to a small extent here and there and interweaving as he went along some of the best remembered features of his own plan."93 But after denying that it can be said, Jameson, nevertheless, gets the point across: "—it is possible to declare that if he had done this the result would have been precisely like that which in fact he sent on to Washington."94 Farrand perpetuates the mischief by quoting Jameson on the latter point while ignoring him on the former. In short these skillful commentators level a charge but escape responsibility for the act. The crux of

92. BURNS, JAMES MADISON, PHILOSOPHER OF THE CONSTITUTION 200 (1938).

93. JAMESON, op. cit. supra note 24, at 124.

94. Ibid.
the matter is that there has been to date no satisfactory explanation of the mystery of the Pinckney draft.

It seems to the writer that the method is questionable, the procedure faulty, whereby one is charged with fraud after his death because no one is able to produce documentary evidence to support previous claims: claims which were completely unchallenged until years after Pinckney's death. To make or imply the charge of fraud lacking conclusive evidence is a nadir to which even Madison never sank. But that is precisely what Jameson, Farrand and others do. When it is recalled that when the 1818 draft was published sixteen of the original fifty-five members of the Convention were living; that only one, Madison, ever questioned the legitimacy of the draft, which he did not do until six years after Pinckney's death and eleven years after publication of the paper; that one of the members of the Committee of Detail, Gorham, was still alive; that Gorham, whom Pierce described as "high in reputation, and much in the esteem of his country-men," never questioned the paper; that Rufus King congratulated Pinckney after publication of the paper on his (Pinckney's) contributions to the Constitution; when all these facts are recalled the defamatory aspersions, the insinuations that have besmirched Pinckney's name for years, do not seem justified.

The most unfortunate aspect of the entire controversy revolving around the Pinckney plan of government has been the shadow which the claims and counter-claims have cast upon Pinckney's actual contribution to the Constitution.96

That part of Pinckney's actual contribution indicated in this paper has been determined without reliance on the two most disputed documents, the "Observations" of 1787 and the draft of 1818. The forty-three components of the Constitution for which Charles Pinckney was in large degree responsible constitute no mean contribution to that document. Further research would be required to evaluate this contribution relative to that of other delegates but it is doubtful that any

95. 3 FARRAND 87.

96. That political scientists have generally ignored Pinckney's contribution is borne out by a survey of nine representative texts on American Government. All of these texts have chapters or sections treating the constitutional period of 1787 in which the various plans before the convention and the leading participants therein are discussed. All have indices but not one contains the name of Charles Pinckney. Three of the nine books make no mention of Charles Pinckney in the text; the other six devote one or two lines to his name.
man contributed more. From what is known it would appear, as was said to Pinckney by Justice Johnson in 1821, that he (Pinckney) "more than any other" member was and ought to be considered as the "Author" of the Federal Constitution.97

It cannot be said that the provisions noted represent the entire contribution of Charles Pinckney to the Constitution. The documentary evidence used to determine the provisions of the original Pinckney plan is fragmentary. As Professor McLaughlin has said: "—it must not be assumed that we know all that Pinckney thus contributed to the fabric of the Constitution." But on the basis of what is known it can be suggested that Charles Pinckney evidently made a greater contribution to the Federal Constitution than has been generally recognized.

97. Charles Pinckney to Col. Robert Y. Hayne, Philadelphia, March, 1821, Ms., NYPL.