

## Louis Guillaume Otto to Comte de Montmorin New York, 20 October 1787

When I had the honor of sending You the translation of the new System of Government proposed by the Philadelphia Convention I could not permit myself without being presumptuous the slightest remark about an act the drafting of which had occupied the most enlightened and skillful men on the Continent for many months. Today I will take on the difficult task of discussing the perfections and the disadvantages of this new plan, of which I already had the honor to give You a summary in my Dispatch No. 91. before the Convention began its sessions. The newspapers which I have the honor to send You will sufficiently inform You of the party spirit developing daily on both sides in order to spread alarm or in order to solicit public praise. It is my duty to present You with the true State of things from an unbiased point of view.

On one hand, *energy and national reputation*, on the other, *civil and political liberty*, give the new Constitution either a favorable or alarming aspect.

A President, vested with the most extensive executive powers, Commander in chief of the land and naval forces, disposing of the most important Affairs civil as well as military, with the consent of the Senate, elected for four years and capable of being reelected for life—a Congress composed of two Houses, possessing the *exclusive* right to levy taxes, excises, to contract loans, to establish Courts of Appeal and even inferior tribunals in the various States, to call out the militia and to have it march from one end of the Continent to the other, to raise an Army, fit out Fleets—a Government that can effectively control the irregular proceedings of inferior [state] Legislatures, prevent the creation of paper money and the legal injustices of debtor States [to their creditors], centralize the interests and the power of this great empire, regulate Commerce with foreign nations as well as that between individual states, restore national honor abroad, pay the public creditors, and reestablish good faith, justice, and integrity throughout the united States—This Government ought to arouse the enthusiasm of all those who desire the aggrandizement and prosperity of their country. In effect the Congress will be able, without exacting great sacrifices from the people, to pay the public debts and to become formidable in America and in Europe; it will be able to conclude extremely advantageous treaties with foreign nations and above all protect the property of individuals, which it has never been able to do since the revolution, and if liberty consists of not only obeying the law, but of obeying just and equitable laws the proposed Government appears to lead more immediately to liberty. All those who have some property, and this is a very considerable number in America, ardently desire the establishment of the new Constitution; they consider it the only way to remedy the present anarchy; they appear to have no doubt that it will be adopted by the people and they already speak of Gnl. Washington as the only man capable of filling the important position of President of the united States with dignity.

In admiring the wisdom, foresight and talents of those who have designed this new plan, and even agreeing with them that nothing could at this moment be more glorious for the united States, I cannot refrain, My Lord, from submitting to You the reflections of those who consider this plan only from the point of view of *public liberty*.

“They believe to have sufficiently balanced, they say, the powers between the President, the Senate and the House of Representatives in comparing them to the King of England, to the House of Lords and to the Commons; but the latter are political personages essentially different by their birth, their rights, their riches and above all by public opinion, whereas in America the difference will always be nominal and, instead of being balanced, the three bodies will unite in a short time whether to conserve their places, to place their friends there, to enrich themselves at the public expense, to encroach upon the liberty of their Fellow Citizens. To govern an immense country it will be necessary for them to have immense powers and what will become of these powers when they turn out to be concentrated in a single body?—It is true that the President will be elected for only four years, the Senators for only six, the Representatives for only two, but they will always be *eligible*; will not the elections be for sale as in England, especially when they will be able to command the public treasury at will?—The salaries of the President, the Senate, the lower House will be fixed by themselves; who can stop them from raising them endlessly?—The Congress will have the right to determine the place of elections; will it not give preference to a city which is particularly devoted to it?—The lower House has the right to impeach a public Officer before the Senate, that is to say before his equals, before men equally interested in destroying all those who are opposed to usurpation! still another poor imitation of the English Constitution. In Great Britain a coalition between the Lords and the Commons is almost impossible; in America it will be completely natural between Senators and Representatives.—Each House will judge the qualifications of its Members and elections; it will therefore be able to reject all those who will not side with their views; will it want to admit a Doria?—The Congress will be able to raise Armies and fit out fleets; will it not be as concerned as the Roman Senate was with instigating wars in order to maintain many troops and afterwards to employ them in the destruction of liberty?—The Congress will impose whatever taxes it judges appropriate, it will levy imposts, borrow money; will not the Sums raised be used to corrupt the elections? to whom will it be accountable for the Sums raised?—to the people? they will not know how to judge; to the President? he will have a good share of the spoils.—The Congress will suspend the writ of *habeas corpus* in case of rebellion; but if this rebellion was only a resistance to usurpation, who will be the Judge? the usurper.—The Constitution is not even accompanied by a *Declaration of rights*, so that no recourse remains for the Citizen against oppression. It is the same with the States; since the Constitution does not permit them to conclude treaties, to combine among themselves, to emit paper money, to raise troops or taxes without the consent of Congress. In England the right of resistance is part of the Constitution, here it is not even mentioned.—All civil cases will be decided in the supreme Court without benefit of Juries; but Judges will be named by Congress; what an unjust way of applying unjust laws!—The Congress will have an independent territory of ten miles square, it will be able to erect forts, magazines, dockyards there; it will be able to buy neighboring territories to construct other forts, &c there, the President will have there all the trappings of a Sovereign; at the end of four years it will be difficult for him to descend into the crowd, to abandon the Command of a fleet and of an army, all the Officers of which will have been named by him, commissioned by him and who consequently will be considered personally attached to him. He will receive and appoint Ambassadors, he will conclude treaties with the consent of two thirds of the Senate, he will convene the Congress at least once a year; but if he does not convene it, if like Cromwell he chooses a certain number of his creatures to govern

tyrannically; where is the remedy?"

Many of these objections, My Lord, obviously contradict themselves, some suppose a coalition among the three branches, others a decided preponderance of the President or of Congress. As for the two Houses the balance is in reality ideal and their interests must always be the same unless it is believed that the Senate will side more with the President with whom it is more directly related. But what will give surprising vigor to the new Government, is that Congress reserves the right to establish supreme Courts of appeal, which will have cognizance in the first instance of all cases respecting the law of nations or the laws of the united States and in general of *all the cases which will be brought under this Constitution*; they will even have the right to void laws made in the several States. The power of individual state Legislatures will be limited therefore to regulating their internal police; they will resemble corporations rather than Sovereign assemblies. Many people are even of the opinion that they still have been left with too much authority and that the people will not be able to be prevented from viewing them [the state legislators] as more direct and more faithful representatives than those who will be found in Congress.

It will perhaps be interesting to examine, if in the midst of peace and without any urgent necessity it is prudent for confederated republics to unite in one body all their authority and their powers and to elect an Officer as powerful as the President of the united States will be? I must leave this task, which is foreign to me, to more skillful pens.

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