thought not clearly expressed, and of adding such as are necessary, for the preservation of the rights and happiness of the people. But the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

ADDRESS.

To the People of the State of Vermont:

The Council of Censors, elected by the Freemen of the State on the last Wednesday in March, 1834, pursuant to the 43d Article of the Constitution, having considered and deliberated upon the various subjects, by that article referred to us for consideration, have now the honor of submitting to your consideration the result of our deliberations, so far as your future action thereon has become constitutionally necessary.

Among the *duties* assigned us by the Constitution, are the proposing any amendments, explanations, or additions to any article of the constitution, in our opinion, necessary for the better preservation of the rights and happiness of the people. In the discharge of these duties, we have carefully examined into the constitution, and its various provisions, and have pointed out several defects therein, as a plan of government, and have proposed the appropriate remedies.

Among the *powers* assigned us, is that of calling a Convention: in the exercise of this power, we have resolved to call a convention, to consider of the proposals we offer as remedies to the defects in the constitution, as a plan of government, the better to secure the rights and happiness of the people.

We believe that the framers of the constitution had in view, not only an equal representation of the people in the delegation of powers, but also intended to make provision, in that instrument, for the proper checks and balances in the legislative department, to the end that hasty and improvident legislation might thereby be avoided.

An examination of the constitution, and its provisions, will, we believe, satisfy any one that it was designed for, and adapted to, a people, few in number, whose business relations were few and simple, and but little advanced in agriculture, commerce and arts; and that however wisely it may have been adapted to the infancy of the state, in commencing government, the changes which an increased population has produced, and the more multiplied and complicated relations which have sprung up, in the course of forty years, call for a more artificial and perfect system of government, than is to be found in that instrument.

The constitution of the United States, and those of nearly all our sister states, show that a division of the legislature into two separate branches, with co-ordinate powers, has been found best adapted to ensure safety and stability in legislation, and to prevent a hasty and improvident exercise of legislative authority.

It is believed that wherever supreme legislative power is vested in a single individual, or in a single assembly, *unchecked*, the *tendency* of the exercise of that power is, in the former case, to despotism—in the latter, to anarchy.

In the structure of the best constitutions of government, wherein all the rights, and the rights of all, are best secured, it will be found that peculiar care has been taken, in the structure of those forms, to provide suitable checks in the distribution of powers to the different branches of the law-making power, in a manner most effectually to guard against a hasty or undue exercise of that power.

We believe that the framers of the present constitution, in making provision in that instrument, for the Executive council, had this object in view. This belief is strengthened by the fact that

The division of the legislature into two separate and distinct branches, with parity of powers, sitting and acting separately, is, we believe, founded on principles of good policy, and sustained and sanctioned by universal experience. By such a division of legislative authority, a guard is interposed against the evil effects and dangers consequent upon the hasty and premature adoption of measures springing, as they sometimes do, from passion, party influence, party intrigue, or local interests, which are often bro't to bear with great force, and exert a powerful and dangerous sway in a single assembly.

It is obvious that measures originating under such circumstances, or under *any* circumstances, in a single numerous assembly, are not as likely to be carried through to final consummation, and assume the character and solemnity of laws, when they are to be subjected to the revision and scrutiny of another body, acting separately, more deliberative, without prejudice or undue influence, by whose authority such measures may be arrested in their progress, and whereby the evils of a hasty and premature exercise of power in the other branch may be avoided.

In a Senate are presumed to be found deliberation, wisdom and stability, as the peculiar properties of its constitution and character. Although in the proposition which we offer, for substituting a Senate for the Executive Council, the Senators are to be elected annually, still we believe, that from their deliberative character, numbers, age and experience, they will possess and exercise by way of check and counterpoise to the other branch, an influence and control, in all matters of legislation, both safe and salutary.

That legislation has been fluctuating, hasty and improvident, and unnecessarily multiplied, will be apparent to any one who will look into the statutes; else, why so many *additional, amendatory, explanatory* and *repealing* acts, in continual succession, with which our statutes abound, if those acts had been providently and deliberately passed? The subject matter has not so often changed. This will appear by reference to one fruitful source of legislative enactments—that in regard to the judiciary department.—So essential are stability and uniformity in the administration of civil justice, in that department, that legislative enactments in relation thereto ought to be few, and those clear and unambiguous.—It is through this department that the government is brought home to the people, and made to bear upon them individually, more than any other: but if the laws "regulating judicial proceedings" are fluctuating, there is great danger that those proceedings themselves will be fluctuating, and the rights of citizens rendered insecure. Yet it is believed that nothing is hazarded, by saying that twice as many acts have been passed in relation to that subject, in any given period, as there have years passed in the same period.

We might refer to several other subjects about which legislation has, we think, been unceasingly multiplied—such are the jurisdiction of justices of the peace, settlement of estates, and common schools.

We are unable to assign any other reason for this accumulation of legislative enactments, than a precipitate and improvident exercise of legislative authority, without due deliberation and reflection in the application of remedies to the evils intended to be remedied.

The collisions which have of late arisen between the Executive Council and General Assembly, we consider of serious import, and call for remedial interference; as they are, from the present aspect of things, likely to continue so long as the present organization continues. And it is for the people alone to find and apply the remedy.

In 1826, the Council passed a resolution that the House of Representatives had no authority to pass a bill into a law, without the concurrence of the Council; and their doing so was an infringement upon the constitutional powers and prerogatives of the Council. On copies of these resolutions being sent to the House they in turn resolved that they *did* possess the constitutional power to pass a bill into a law without the concurrence of the Council, which had originated in the House, and been suspended by

the Council. Thus the issue was formed, without an arbiter to decide it, except the parties themselves. The issue was on the side of numbers—the House claimed it, and acted accordingly. The decision, as it now stands, is this: That no legislative authority whatever, express or implied, is granted by the constitution, to the Executive Council. Whether this decision be right or wrong, the effect is the same—to reduce the Council to an inefficient, powerless body. They may give their advice, or propose amendments to be adopted or rejected at the will of the General Assembly.

Under the present organization, no reasons of state policy occur to us for the longer continuing of that body, thus shorn of its authority, as an appendage, next to useless, of the General Assembly, subject to its will and under its control in all matters of legislation.

We can hardly refrain from the expression of the opinion, that the Executive Council do not now hold and exercise that balancing power in legislation, which the framers of the constitution designed to grant to them in that instrument. No improper motive, however, is intended to be imputed to the House of Representatives: if the power constitutionally belongs exclusively to them, it is their right and duty to assume and exercise it: they act no otherwise than single assemblies usually do: tenacious of power and prerogative, they will not readily surrender them on doubtful constructions.

But, fellow-citizens, much as these collisions and interruptions in the important business of legislation are to be regretted, still we must take the case as it is, and endeavour to provide remedies for the evils as they are found to exist. The remedy we propose is the substitution of a Senate for the present Council, with competent authority to interpose effectual checks to the undue and hasty exercise of legislative power by the other branch.

Plans of government are sometimes proposed as matters of experiment. The one which we now offer for your adoption, we believe a safe one, and comes strongly recommended by that oracle of wisdom, *universal experience*.

It is a common remark, that we have done well under our present constitution: this may be true, and still it would be wise and prudent to set guards for the future security and permanency of our prosperity, tranquility and happiness. If we, as a people, have been prosperous and happy under our present form of government, other causes than that form are assignable. That our vallies have yielded abundant crops, and our flocks and herds have fattened upon our hills, furnish no good reason why defects in our frame of government should not be amended.

If the character of our population be such at present as may furnish some security against the abuses which may grow out of defects in our form of government, we cannot promise ourselves that such a state of things will continue. We cannot foresee what changes may be bro't about by the various events to which all affairs, depending on human agency, are liable—by the course of migration, the influx of foreigners, the multiplication of corporations, the investment of large capital, in banking, manufacturing, and other establishments; and which will bring, in their train, a variety, and perhaps, conflicting interests. The time may come when constitutional power may be eagerly sought for, to be exercised for party or sinister purposes.

Our relation to the Union, as an integral part, might furnish motives for assimilating our form of government to that of the other members.

We are fully sensible that long established forms of government ought not to be changed for slight and transient causes:—still, when defects in those forms become palpable, it is a dictate of wisdom and prudence to remedy them; and we believe the present a very favorable time.

The enquiry may well be made, whether the proposed amendments would have the effect, if adopted, to change a long established form of government: for, as before remarked, such was the practical construction of the constitution, that the Council did exercise parity of powers in legislation, and bills often originated in that House; and it was not until within the last few years that this power was denied them by the other House; and it is within

the same period that the House of Representatives have assumed, and claim to possess and exercise exclusive legislative authority: the form is therefore of recent origin; and should it long succeed, it will have no precedent.

Most of the state constitutions, which were formed immediately after the revolution, made provision for dividing the legislature into two distinct and separate branches, with co-ordinate powers. To this there were some exceptions. Pennsylvania and Georgia were within the exception. They commenced self-government, by placing legislative authority in a single assembly. They however, soon discovered their error, and have subsequently changed their form, by providing for a Senate, with co-ordinate powers.

Some of the states, immediately subsequent to the revolution, continued on the plan of their colonial charters, which by the changes effected by that event, threw the legislative power into the hands of a single assembly. In these cases, reliance seemed, for a considerable time, to be placed on the *character* and *habits* of the people, to supply or remedy the defects in their form of government. Time and experience have, however, convinced them of the error, and more recently they have new-moddled their form of government, by providing for a Senate, with co-ordinate powers.

We admire and approve the constitution of the United States, as containing provisions calculated to secure and perpetuate our rights and liberties, personal, civil, and political; and this has stood the test of peace, of war, of party strife, and of sectional dissention.

The same provisions are found in the constitutions of our sister states, and meet with like approbation.

It is believed that Vermont is the only state in which the legislature is not divided into two co-ordinate branches.

The people of Vermont are not behind their neighbors in the science of self-government, and it would seem that they are in advance, in that particular, of the government itself as indicated by its form.

We consider a Senate, constituted as proposed, as possessing many advantages over the Council as at present elected and organized, even if it were clothed with requisite authority.

The Council, twelve in number, are elected by general ticket, and, as custom has established, one in each county, up to that number. The electors will have little or no knowledge of the person or qualifications of the candidate, except perhaps the one in their own county: whereas, the Senators, in the manner proposed are elected by counties, and by the freemen of their respective counties: the electors will generally be acquainted with the candidates and their quallifications. And from their numbers, their deliberative character, separate action, and entire independence of the other branch, will possess a more controlling influence, and ensure a more steady and consistent direction in the exercise of legislative authority.

In designating the number of Senators, we have acted on the principle of applying an *adequate* remedy to the evil designed to be remdieed: the number is large in proportion to our population, but not large in proportion to the other branch. The House of Representatives is more numerous in comparison to our population, than in most of our sister states.

The Senate ought, in point of members, to be apportioned to the other branch, in that respect, to which it is designed to be placed as a balancing power.

By reference to the constitutions of the other states, it is found that there is some diversity in the appointment of the Senate, as to numbers, to the popular branch; and probably the average result will allow to the Senate, in the *ratio* of numbers to the other branch, about one to five. In the plan we propose, the number of Senators is less in proportion to the other branch—being about one to eight. We think the number not too large. In allotting the Senators to the several counties, we assume as a basis one Senator to every 10,000 inhabitants, on the census of 1830, having regard to the greatest fraction. This principle carried out, produces the result as proposed.

The provisions made in the constitution for its own amendment, are found in the 43d article. The repeated unsuccessful attempts which have been made to effect some amendments of acknowledged necessity, prove that these provisions have not answered the beneficial purpose for which they were designed. For these repeated failures, we can assign no other reason, than that the subject has not been properly presented to the people. Believing that all political power belongs to, and is derived from, the people; and that it is their peculiar province to form plans of government, and to alter and amend the same, as they may think proper.

In order to bring the subject directly before the people, we propose so to alter the said 43d article, as to provide, that the Council of Censors shall, hereafter, when they propose amendments or alterations of the constitution, submit the same directly to the freemen of the state, assembled in their respective towns, to be adopted or rejected by them as a majority shall decide. This mode appears to us to possess many advantages over the mode heretofore pursued, of submitting such proposals to a convention, as it gives every freeman the privilege of exercising his inherent right directly upon the subject matter proposed, without the necessity of delegating that right to another for him. It will also express the *will*, and ensure the *action* of the *whole* people, without regard to corporations. It will, moreover, save the trouble and expense of electing and paying a numerous convention, for the purpose of doing that which the freemen are fully competent to do for themselves.

The present mode of appointing county officers, by the legislature, we consider objectionable, and that a different mode ought to be adopted. Besides the time spent in making those appointments, which ought to be devoted to the more appropriate subjects of legislation, there are other evils incident to *the present mode*, quite notorious. *The great number of candidates presented for those offices, each accompanied by his*

friends, to advocate his "claims," the contests which generally and almost necessarily grow out of these conflicting claims of rival candidates, are calculated to lead to the use of improper, not to say corrupt, means in the attainment of the object.

We also consider that the freemen of the respective counties are fully competent to the election of county officers: they will have the advantage of an acquaintance with the candidates and their qualifications, and will be more likely to make such selection as will be acceptable to the people. We propose, therefore, so to alter the constitution, that the Judges of Probate shall be elected by the freemen in the several probate districts. That Sheriffs, High Bailiffs, and State's Attorneys, be elected by the freemen of the several counties; and Justices of Peace, by the freemen in the several towns.

In proposing this mode, we have kept in view, that, as in republican governments, all power resides in the people, so all elections to office ought to be kept as near the people, and as much within their control, as convenience will permit: that the candidate for office ought to be elected by those whose officer he is, when elected. What is here said, applies to all county officers, except Justices of Peace. In proposing that Justices of Peace should be elected by the freemen in the several towns, though county officers, still as their official duties are mostly exercised within their own towns, it is considered that the persons elected would be more likely to be acceptable to the people. But chiefly our purpose is to lessen the number: we propose to limit it to ten in each town, which it is believed will be amply sufficient for the convenience of any town. Owing to some cause, which perhaps may be found in connexion with town elections of representatives the number of Justices appointed, especially in some towns, is greater than the public good, regard to the fitness for office, the respectability of the magistracy, or the furtherance of justice do, or can require.

Our proposals, in regard to the election of county officers, are presented in distinct sections, so that one or more may be adopted or rejected, without prejudice to the other.

In varying the common tenure of office in case of Sheriff, to three years, we believe it will lead to greater caution and circumspection in regard to qualification and responsibility in the selection of a candidate to fill the office. And by rendering the incumbent ineligible for the next succeeding three years, will prove a salutary provision, as it will require the Sheriff to close up his official business within short periods. The office is one of difficulty and hazard: and in cases where the Sheriff has held the office for many successive years, without frequent settlements of his official concerns, the Sheriff and his bondsmen have been involved in difficulty and ruin. The Sheriff ought to know, and his bondsmen and others concerned have a right to know, at short periods, the condition of the department.

We have proposed adding an entire section to the constitution, for the protection of every person against all restraints of personal liberty, without the authority of law, by providing that the writ of *habeas corpus* shall be a writ issuable of right, and shall in no case be suspended; and although the legislature, by enactment, have made liberal provision for its use, yet we consider, from its importance to the liberty of the citizens, it ought to be made to rest on a more immutable foundation than legislative enactment. As a charter of liberty, it is worthy a place in the constitution.

In regard to the *manner* of calling a Convention, the members of this Council have entertained some diversity of opinion. We are not able to assign any other reason for the repeated failures in the adoption of amendments which have been proposed by the Council of Censors at nearly every septennary since the adoption of the constitution in 1793, than the mode of electing delegates, not by the people, but by corporations. And as the *manner* is left to our direction, a portion of us consider that the mode ought to be so changed that the delegates shall be elected from the different sections of the state in the *ratio* of population, as being more equal, and in accordance with the spirit and genius of our republican form of government. On the other hand, a portion of us, admitting the correctness of the principle as more equitable, and in conformity to the spirit and genius of the government, but object to its adoption on the ground of expediency. The authority

of precedent is urged, and the inexpediency of departing from long established usage.

But so strongly impressed are we, with the importance of some amendments to our present form of government, and believing that the same sentiment is entertained by a great majority of the people, and anxious to bring the proposed amendments within their reach, for their constitutional action thereon, something of individual opinion as to the mode, has been conceded, and the mode pointed out in the ordinance, is the result of compromise, with a view to the advancement of the public good.

Having closed our deliberations on the various subjects assigned us by the constitution as a Council of Censors, we now present to you, fellow-citizens, the result of our deliberations, in the confident hope of your approval and adoption.

In the discharge of our duties, we have faithfully and diligently examined into the constitution and its various provisions as a frame of government, and have pointed out to you wherein we consider it essentially defective; and have also pointed out the remedies proper to be applied; and by the application of which, we believe, legislative authority will be exercised with more safety, steadiness and harmony, the rights of the people better secured, and their prosperity and happiness better preserved.

By order of the Council of Censors.

JOEL DOOLITTLE, *President.*

WILLIAM HEBARD, *Secretary.*

On motion of Mr. *Foote*, the Articles of the proposed amendments, alterations and additions to the Constitution of the State of Vermont, as proposed by the Council of Censors, were laid on the table.

The Convention adjourned.