

1801, Jan. 19

Pittsburg January 19th 1801



Sir,

Did not expect an answer to my note, not meaning
to draw a person engaged in affairs into a correspondence:

Cum tot sustineas, et tanta negotia —
— In publica commoda peccem,
Di longo sermone ~~more~~ more —

But it may be useful to you in your present and approach-
ing responsible situation to have hints, or indicia of the
public mind on occasional subjects. With a view to inform
and from a zeal for the credit of your administration I may
occasionally communicate such hints as do not reach the
Gazettes or are proper to be inserted in them. A drawback
upon me is that I do not write myself, but use an
amanuensis. My hand writing is not easily legible,
and it cramps my fingers, and hurts my nerves to write. Hence
it is that I have avoided all correspondence not absolutely
necessary: a loss no doubt in the course of my life, both of

of honor and profit, but it has saved time; I have had leisure
to read the more. But am sensible of the want of that confirma-
-tion in actions, or incitement to improvement which communication
with philosophic men gives. "As iron sharpeneth iron, so doth
the face of a man his friend".

It is with this view, however slight the assistance,
that I subjoin this note on a hint contained in your letter
to me, the opening abyss of a probable suspension of the
federal government, from the non-election of a President in
the present case of an equality of votes for two persons. In
the Capital of this state / Philadelphia / from which I have
just returned, and in the Villages of Lancaster, Carlisle &c.
the more violent of the ex-federalists protest against an elec-
-tion at all, or declare for Burr as President. The
moderate and discerning reprobate both ideas, and say should
such a conduct prevail they will no longer clasp themselves
with such federalists. The ex-federal enraged give us a
reason for their declaration, that it will spite the repub-
-licans. Some of them have been heard to use the language
that they wished to do all the mischief in their power. Tho-
-mas Duncan, a lawyer of eminence in the Mid-land Court

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counties used this language as reported to me by the Governor, and this law character is considered as an organ of the party.

The more strenuous of the republicans affect to declare themselves for Burr, and tell these ex-federalists, that if Jefferson will ever it will be on the side of moderation, and for their part they will prefer Burr made, perhaps, of sterner stuff, & from his long wars personal and political at New-York more habituated to controversy, and if from no other principle, yet to rebath all suspicion of conciliation will act with double rigor, and sweep from office every individual of the preceding administration.

An idea by the ex-federalists has been thrown out that the present case will come within that section of the Constitution enabling Congress to declare what officer shall act as President in case of the removal of a President, and within a subsequent act of Congress March 1st 1792 Sec. 9. that in the case of removal "the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being shall act as President of the United States" &c. But the term removal carries with it the idea of impeachment, and the expiration

expiration of the term of Presidency is no removal. But a President pro tempore by the constitution can be chosen only in the absence of the Vice-President, or when he shall exercise the office of President. There will be no absence in this case or exercise of office of Presidency, and so no President pro tempore can be chosen. But should it have been done, or should it be done the present case is not that of a removal, and there is no room under the Act of Congress for the President pro tempore to act. The Constitution supports the construction by Art. 2. Sec. IV. stating a removal from office to be an impeachment &ca. But great liberty has been taken with the constitution on what lawyers call a liberal or equitable construction, and a President pro tempore may be made and that officer ^{he} will be called may usurp the Government. It was announced to me on my way at Bedford the residence of the family of Woods into which James Rofs has married, that he had passed down some weeks ago, and was chosen President pro tempore the day of his arrival. At this place Pittsburg, it is understood that letters had arrived from Genl. Tracy to James Rofs, wishing his immediate presence with the Senate for the express purpose of being chosen Vice-President with a view to take upon himself the office of President

President on the event of a non election by the Legislature.
In this case what ought to be the measure with the
Republicans? The Governor of Pennsylvania stated to me as
his opinion and of others men of legal knowledge with whom
he had conversed, that it was in the power of the two
persons equal in votes to settle this among themselves by
writing, under hand and seal. This would seem to receive
countenance from the Act March 1st 1792 Section 11.

"That the only evidence of a refusal to accept of the
office of President or Vice-President shall be an instrument in
writing, declaring the same, and subscribed by the person refusing
to accept, and delivered into the office of Secretary of State". It
would seem therefore in the power of one to refuse the ac-
-ceptance of the higher office. But doubtless the section
contemplates a refusal to accept after a special designation
by election to the particular office. There cannot be a
refusal to accept until there is an offer. A majority of
nine states can alone offer the Presidency.

It may be said an individual may waive his right of
choice where there is equality of votes, under the maxim, *Juris
pro se introducto quinquies renunciare potest*. But this is

is not a right of the individual exclusive and independent
It is the right of the people to dispose to the office. This
proceeding cannot therefore be strictly regular and legally
justifiable. It must savor of usurpation. yet well knowing
the public mind on this subject it would be a safe usurpation
and from the completion of the next Congress, there can be
no doubt but that the irregularity would be purged by
a subsequent choice of President sanctioning the interme-
-diate acts as necessary and unavoidable to preserve the
Government. Ratification is equivalent to original authority.
The Maxim is, *Omnis ratio habitus retrotrahitur, et
-que mandato equiparatur.*

For the case of President pro tempore usurping the
Presidency there is a trespass upon substance as well as
form. It is without foundation or color of authority,
and on the succession of the legitimate power of govern-
-ment this officer so called might be liable on a
charge of treason; but under the present judicial au-
-thority of the United States the prosecution could not
be carried into effect. But in the mean time I had

have no manner of doubt before the legitimate power
of Government could come into exercise the usurpers would
fortify themselves by an armed power, and attempt the
retaining the sovereignty by force. It would be a fairer
opportunity than Cromwell had. An Army under the
name of Volunteers consisting of ex-federalists with Alexander
Hamilton at their head could get possession of Forts, Arsenals,
Stores and Arms in a short time. I am confident James
Rofs has boldness enough, ambition and want of principle,
with chagrin of disappointment to attempt this in a moment.

Were I in the place of President designate, in my
present mind I would not hesitate one moment, to announce
myself on the fourth day of March next President, and to
convene the legitimate authorities instantly to ratify
~~and~~ that annunciation. The consent of the rival Candidates
if he might be so called, having in the mean time been
obtained in writing, and filed in the Secretary's office by
analogy to the form of proceeding under the act of
March 1st 1792 in the case of refusal to accept or reig-
-nation. In a case of this nature all depends on the

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the decision and rapidity of the movement, the hadrebe-
-lon or fortunate boldness of the Greeks, the coup de main
of military men.

But we hope better things, and I think the rascals
will tremble at the extremes which they meditate. They will
dread the opinion of ex-federalists at home, the more
war and moderate whose opinions will begin to reach
them. Should they dare the bayonet, or provoke hostilities
by their conduct, they will know that valor, virtue and
numbers are against them and they must go down in a
contest by arms. I cannot but believe that on the ap-
-proaching day of election there will not only be nine states,
a unanimous vote in favor of Thomas Jefferson President
and Aaron Burr vice-President; but should they elect
Burr President, it will give Jefferson afterwards ~~the~~
the ~~same~~ presidency, an amendment to the Constitution having
in the mean time taken place, or the designation of
President and Vice President ascertained by consent of dropping
votes or vote for one or other of the Republican Candidates
in some state or states.

John Israel printer and editor of the tree of liberty at this place informs me that he has occasionally transmitted your some numbers. The patronage of this paper has drawn upon me personally much abuse, and rebaldry in the ex-federal prints. They are aware of the great importance of the post which has been seized, and have felt the effects of it. But the republicans are poor in this extreme of the States and but for considerable pecuniary assistance on my part, it could not have been set up or supported. The adversary press of John Scull is supported by private contributions from the party, and has the advantage of sub-post from government by the publication of the laws of the United States an enrolment which we hope to see soon transferred to the Herald and Tree of Liberty.

Having put this Western hour so to speak in order as far as can be done by arrangements and supports of mine, I mean to withdraw to a more mid-land situation in the State as necessary to the convenient discharge of the duties of the office which I hold, & my being more in

the neighborhood of the sea-coast cities, and the seat of

P. S. Writing for Israel's paper with a view to spit it, occasionally
while at home I have been noting down this morning some
lines, I will not say dictated to me by Urania or any
other of the Muses,

"Which nightly me revisits"

But ~~which~~ I meditated, not altogether in my slumbers, but
on my bed in the course of the night, and which entitled

Jefferson

in imitation of Virgil's

Pollio

"Sicelides Mura, paulo majora canamus."

Should I finish it I will send it to the press and
enclose a copy

I have finished the poem and enclose a copy, though
possibly it may be extracted and you may see it in other
papers.

In the Aurora of January 10th by the Post I observe
that the idea which had occurred to me of a seizure of the

18649-a-government by a president pro tempore; and if it is seized?

J

Breckenridge Henry. H. Pittsby. Jan. 19. 1801.

rec^d. Jan. 30.

Engage it will be claimed. They will not be such fools
as to give it up and subject themselves to be called to
account for the usurpation, at least if the spirit and coun-
sels of James Rofs should prevail. I have known him in law
practice capable of every thing short of a falsification of
the record and tampering of officers. ~~He is~~ In contracts
his character is that of doing any thing that the rigor of law
can screen or support. In his canvassing for the election of
Governor, and management of it I saw him capable of every
thing from general arrangements in the face of the law to the
detail of acting on the ground.

It is understood here that he declared before his departure
that from the letters of Senator Fracy to himself it was expected
that cell Matthew Lyon of Vermont could be taken off and that State
gained, that Lyon could be bribed; further that it was fixed
and he was secured in favor of Burr.