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The Thayer Correspondence: Introductory Note

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THE THAYER CORRESPONDENCE

INTRODUCTORY NOTE

BY JUSTICE HERBERT L. MESCHKE AND LARRY SPEARS

The Thayer correspondence was found in Manuscript Box 18, Folder 15 and Manuscript Box 19, Folders 5 and 7 of the James Bradley Thayer (1831-1902) Papers at Harvard Law School by Mrs. Judith W. Mellins, Manuscript Associate, Harvard Law School Library, Langdell Hall, Cambridge, Massachusetts in 1987. Publication here is by written permission of Professor Harry S. Martin III, Librarian of the Harvard Law School, dated June 19, 1989.

This correspondence occurred between April 7, 1889 and July 31, 1889, between Professor Thayer and officials of the Northern Pacific Railroad. Since this correspondence bears on the creation of the North Dakota Constitution in 1889, photocopies of the letters are on file with the North Dakota Historical Society, North Dakota Heritage Center, Bismarck, North Dakota.

Some of the letters are typewritten; some are handwritten. Some have handwritten notes by Professor Thayer added at the top or in the margins, which are also transcribed here to the degree possible. Not all of the handwriting is decipherable so blanks have been left where necessary. No effort has been made in this transcription to distinguish typewritten and handwritten letters.

The Thayer correspondence is discussed in the accompanying article entitled "Digging for Roots: The North Dakota Constitution and the Thayer Correspondence."

The authors and editors recognize their debt to Peggy Ganyo for her tireless efforts in carefully transcribing this Thayer Correspondence. Some words are not decipherable and are indicated by blanks. The meanings of abbreviations and indication of handwritten portions are included in brackets.

[Handwritten Note, on the April 6 letter.] R[esponse] on my note from Beaman Ask if I can have P[eddrick]'s conspectus. Will do it with Beaman.

J.B. Thayer Papers
MS Box 19, Folder 5

Dictated

Mills Building,
New York, April 6, 1889

Dear Professor Thayer:

It has been a favorite scheme with me for a long time to take a hand in the Constitution making of the new States along the line of the Northern Pacific, *viz.*, Dakota, Montana and Washington. In other words, I want to bring all the influence I may be able to command to bear upon the Constitutional Conventions, so that the result shall represent improvements upon the existing State Constitutions. With a view to this, I am now making preliminary arrangements for producing with the cooperation of others more competent than myself, a model organic law which shall serve as a piloting instrument, so to speak, for the conventions.

Knowing of no one more competent to take a leading part in this undertaking than yourself, I would inquire whether you are willing to lend me a helping hand? As there is not much time for the accomplishment of the task, I would like to obtain as much of your time as you can spare from your regular duties. I would not, of course, come forward with such a claim were I not prepared to say that I shall be able to allow a liberal *honorarium* for such assistance as you may be in position to give. I have so far made a beginning in engaging Mr. Peddrick, in the office of Messrs. Evarts, Choate & Beaman, whom you perhaps know, to prepare a comparative collation or synopsis of the provisions of the constitutions of the several States. I am sure of the cooperation of a number of competent and eminent friends, including our mutual friend, James Bryce.

Would you undertake to make a first draft of what I call a model constitution? This draft would be circulated among the co-workers for critical examination and amendment.

Hoping you will favor me with an early reply, I am

Yours truly,

H. Villard

Mills Building,
New York, Apl. 11, 1889

Dear Professor Thayer:

I have yours of 9th.

I expect to have a conference with Mr. Peddrick tomorrow evening, after which I shall write you. I am delighted to know that I am to have your cooperation.

Sincerely yours,

H. Villard

Dictated

Mills Building,
New York, April 15, 1889

Dear Professor Thayer:

I am much troubled with rheumatism and inflammation of the eyes, so that I could not write to you sooner.

The conspectus preparing by Mr. Peddrick and assistants will not be sufficiently advanced before the end of this week. I will send you connected instalments [sic]. As the best means of saving time and correspondence, would it not be possible for you to come over for a day or two, say, next Saturday? It would give me great pleasure to have you stop with us. We could then consider the whole subject in all its bearings.

I just had a letter from Mr. Bryce, who expresses great eagerness to assist in the work.

I dictate this in bed; so please excuse its brevity.

Truly yours,

H. Villard

(Dictated)

Mills Building,
New York, April 18, 1889

Dear Professor Thayer:

I am much obliged for your note of yesterday.

My affection [sic] of the eyes is very stubborn, and, in view of its infectious character, I feel in duty bound, with much reluctance, to ask you to postpone your visit till next week. Of course, I ought to have free use of my sight for the conference. I hope this will be agreeable to you.

Since writing you, Mr. Peddrick has discovered that the work he has undertaken for me is practically existing, at least as far as the constitutions up to 1870 are concerned, in the analysis of the constitutions forming the last part of the second volume in the work of Franklin B. Hough, which, of course, you know. So all we have to do will be to complete Hough's analysis from 1870 up to the present time.

Sincerely yours,

H. Villard

Office of Evarts, Choate & Beaman,
Wm. M. Evarts,
Joseph H. Choate, No. 52 WALL STREET.
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland,
Prescott Hall Butler,
Allen W. Evarts.

New York, May 7, 1889

My dear sir,

I herewith enclose copies of the papers which were prepared at Mr. Villard's on Saturday last.

The work of analyzing the nine new Constitutions is progressing, and will be completed, I think, early next week.

I shall be happy to receive any suggestion you may think proper to make in this matter.

Assuring you of the pleasure I had in meeting you, I am

Yours very truly,

W.F. Peddrick

James B. Thayer, Esq.
Cambridge, Mass.

[Undecipherable handwritten note on the May 16 letter.]

Office of Evarts, Choate & Beaman,

Wm. M. Evarts,

Joseph H. Choate, No. 52 WALL STREET.

Charles C. Beaman,

J. Evarts Tracy,

Treadwell Cleveland,

Prescott Hall Butler,

Allen W. Evarts.

New York, May 16, 1889

My dear sir,

Last week I sent you a copy of the general divisions of the work upon the new Constitutions, and of the names of those gentlemen who were selected at the conference in New York a few weeks ago.

Most of the work of digesting the selected constitutions has been completed, and I am now more particularly engaged in preparing a draft of the bill of rights and of such provisions as will probably precede it.

I believe I am expected to cooperate in the work before us, and I would be very happy to hear from you in regard to the matter.

The probability is that I will visit Boston in a week or so, to confer with you; but in the meanwhile some preliminary steps might be taken. Any suggestion from you that will serve to expedite the

work, will be welcome. Hoping to hear from you at your earliest opportunity, I am

Yours very truly,

W.F. Peddrick

Prof. James B. Thayer
Cambridge, Mass.

[Handwritten Note.] A May 26 — Almost any day next week. Make a day & night of it out here. Let me know when draft ready & I will arrange to meet you.

Office of Evarts, Choate & Beaman,

Wm. M. Evarts,
Joseph H. Choate, No. 52 WALL STREET.
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland,
Prescott Hall Butler,
Allen W. Evarts.

New York, May 24, 1889

My dear Professor,

I have delayed answering your letter of the 17th in the daily expectation of having a conversation with Mr. Villard. You know he has been very much engrossed of late, and I therefore hesitated to interrupt him.

Your views as to the value of brevity in a constitution for a new State, have much weight; but I have observed a tendency which is not only natural in view of the rapid organization of new institutions and new policies, but which is also universal, to multiply amendments to the State constitutions. I also note that each new State on its admission to the Union, bases its constitution on the accumulated amendments of the other States.

About a week ago I wrote to Washington for a copy of the proposed Constitution for Dakota. I have not yet received it; but yesterday I found at the Columbia Law College, not only that constitution, but also one which has been framed for Montana. I immediately wrote to Senator Evarts asking him to send me three or four copies of these instruments which are contained in Con-

gressional Documents. I will forward you a copy as soon as received. In the meantime however, you may find access to them in Boston. "Senate Reports, 1st. Sess. 49 Cong. 1885-6-Vol. 1:" No. 15. This is for Dakota. That for Montana is "Senate Miscellaneous Documents 1st. Sess. 49 Cong. 1885-6, Vol. I:" No. 39.

From these I infer that a similar instrument has been prepared for Washington Terr'y.

Yesterday I saw Mr. Villard. I showed him your letter to me whereupon he said that you understood his object. He expects to leave here for Oregon on Wednesday, and concluding he said that he left the matter in our hands.

By June 1st. the analysis will have been finished, and shortly after that the typewritten copies. Meanwhile I am giving what time I can to the preparation of a rough draft of the subjects in Article form found in the various constitutions; in other words, a crude model.

I hope to see you in Boston the latter part of next week or the early part of the week following. Please advise me as to your engagements so that I can adapt myself accordingly.

I thank you for your kind expressions; and I assure you it gives me no little satisfaction to be associated with you in a work so eminent.

Yours sincerely,

W. F. Peddrick

Prof. James B. Thayer
Cambridge, Mass.

Dictated

Mills Building,
New York, May 29, 1889.

Dear Professor Thayer:

Your letter of day before yesterday, duly reached me at Dobb's Ferry, where we have taken up our usual summer quarters the last fort night. For this reason, Mrs. Villard will not have the pleasure of paying her respects to your wife and daughter.

As regards the consultation of experts, so to speak, Mr. Peddrick, with whom I have just conversed on the subject, thinks that his

work will be in such shape that it will not be necessary to go very far beyond yourself and himself. In any event, it would seem best that you defer communicating with the gentlemen on your list until you have critically gone over the draft of the constitution with Mr. Peddrick. As I understand, this will be done next week so that not much time will be lost. Please consider yourself authorized to do whatever you may deem necessary to promote the work in the way of the employment of the specialists we have in view, as such compensation as you may be able to agree on with them. As I am obliged to leave this entirely to you, inasmuch as I leave for the Pacific Coast this evening and shall not be able to give any attention to the work until my return on or about July 1st., please bear in mind that the work ought to be finished no later than, say, 12th. of July, as the constitutional conventions meet the latter part of that month.

Sincerely yours,

H. Villard

Office of Evarts, Choate & Beaman,

Wm. M. Evarts,

Joseph H. Choate, No. 52 WALL STREET.

Charles C. Beaman,

J. Evarts Tracy,

Treadwell Cleveland,

Prescott Hall Butler,

Allen W. Evarts.

New York, May 30, 1889

My dear Professor,

I received your letter of the 26th. and thank you very much for your invitation to stay with you over night at Cambridge.

It is very likely that I will be able to meet you Tuesday or Wednesday of next week. I will let you know in advance.

Today I expect to go to Washington to look after some work I am having done there and about which I think I wrote you—the collection of the latest amendments in all the States.

Last evening I had a short conversation with Mr. Villard, prelimi-

nary to his going to Oregon. I will impart to you what he said when we meet, which I hope will be early next week.

Yours sincerely

W. F. Peddrick

Prof. James B. Thayer,
Cambridge, Mass.

52 Wall St.

New York, June 7, 89.

My dear Professor,

My visit to Cambridge, though brief, was very pleasant, not only because the place is so beautiful and so rich in high associations, but because you gave me encouragement in my work. The deeper I penetrate, the more formidable and difficult it grows.

I have been thinking over the question of getting some more help, and I wish you would put me in communication with the gentleman you commended so highly. If he were to come to New York, I could describe in detail what I wish. But as that is improbable, I will have to write him.

I cannot now tell precisely when I will come to Boston; but it will be as soon as convenient.

The draft of the Bill of Rights I sent you, was rather carelessly copied, and two or three things were left out. I will send you another copy tomorrow.

Remember me kindly to Mrs. Thayer.

Yours sincerely

W. F. Peddrick

Prof. James B. Thayer
Cambridge, Mass.

[Undecipherable Handwritten Note on the June 10 letter.]

New York, June 10, 1889.

My dear Professor:-

I received your letter of the 9th inst. this morning and have writ-

ten at length to Mr. Williston. I hope he will take up the work as I will very much need his assistance.

To-day I received a communication from Mr. Villard to the effect that the conventions will meet a little earlier than was anticipated. Of course this will demand renewed efforts on my part.

I have referred Mr. Williston to you, both for advice and also that he may have recourse to the material in your hands. I hope there will be no difficulty in accommodating him.

From present appearances I expect to have the subject of the three Departments [sic] of Government finished by Monday, and I will then go to Boston to see you unless you indicate a different time.

I expected to send you the bill of rights with corrections but on account of the absence of Mr. Beaman I was compelled to suspend my work for a day or so to assist in one of his most important cases, of which I happened to have special knowledge. I will write to Mr. Villard to-night or to-morrow morning explaining the situation.

Any suggestions that you can make will be very welcome to me as I feel more and more the accumulating difficulties attending my work.

Remember me kindly to Mrs. Thayer and let me know whether it will be agreeable to have me visit you early next week.

Yours very truly,

W. F. Peddrick

Prof. James B. Thayer
Cambridge Mass

P.S. I send you by this mail the following Sections which I have just received from the printer: "XII - 1, Definition of Terms "Office" and "Employment;" "XIV - A - 1, Formation and change of Counties;"

Please let me know whether I have sent to you XII-B-1 which treats of Public Schools, etc..

W.F.P.

Office of Evarts, Choate & Beaman

Wm. M. Evarts,
Joseph H. Choate,
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland,
Prescott Hall Butler,
Allen W. Evarts.

Dictated.

No. 52 WALL STREET.

New York, June 12th, 1889.

Professor James B. Thayer,
Cambridge, Massachusetts.

My dear Professor,

I received a satisfactory note from Mr. Williston this morning, and am very glad that we are to have the benefit of his services.

I hope to be able to leave for Cambridge on Monday next and take with me the larger part of the draft I am preparing. Unfortunately the copyist took my draft of the Bill of Rights for the purpose of making a neat copy, but has fallen sick and has not returned to the office. I expect it however tomorrow and will immediately send it to you.

Would it not be well to incorporate in the Bill of Rights some limitation upon the power of judges of courts to punish for contempt? In some constitutions a limitation is put upon the legislature, but they are silent as to the judiciary.

I send you a copy of the synopsis taken from Houghf's [sic] constitution.

Yours very truly,

W. F. Peddrick,

Office of Evarts, Choate & Beaman,
Wm. M. Evarts,
Joseph H. Choate, No. 52 WALL STREET.
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland,
Prescott Hall Butler,
Allen W. Evarts.

New York, June 14 1889

My dear Professor,

Enclosed I send you at last a revise of the Bill of Rights with some preliminary matter.

I now expect to be in Cambridge early Tuesday morning and to bring with me—a draft of the Legislative, Executive and Judicial Divisions. Of course this work is by no means complete. But it will suffice to lay the foundation, I hope, of the final draft.

I am very hard at work and feel deeply the sense of the imperfection of what I have thus far been able to do. When we meet I will explain to you a scheme of arrangement I have devised.

Yours truly

W. F. Peddrick.

Prof. James B. Thayer
Cambridge Mass.

P.S. You will excuse the shape of the Bill of Rights, for I have not had time to prepare a perfect copy.

Office of Evarts, Choate & Beaman,

Wm. M. Evarts,
Joseph H. Choate,
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland, No. 52 WALL STREET.
Prescott Hall Butler,
Allen W. Evarts.

New York, June 28, 1889.

Prof. James B. Thayer,
Cambridge, Mass.

My dear Professor:-

I herewith send you a draft of the provisions relating to the right of suffrage and to elections. I hope to be able to send you drafts on the remaining subjects to-morrow night, so that you can receive them Monday morning, as I believe you will leave Cambridge on Tuesday morning.

I notice in the newspapers that a constitutional amendment is pending or likely to be pending in Massachusetts and in some other States with reference to the appropriation of public funds for sectarian purposes [sic]. As the Massachusetts amendment seems to be a very good one, I suggest that you examine it.

I find also the draft of a law prepared by the Press Association on the subject of libel. It is questionable whether such a statutory provision would be valid without an alteration of the State constitutions.

I understand, moreover that Judge Christiency of Michigan has prepared the draft of an anti-trust statute which was referred to in the newspapers a few days ago.

I will try and collect these different provisions so that we may confer upon them when we meet. I expect Mr. Villard here by Wednesday next, consequently I will not visit you until I have had an interview with him.

Please present my regards to Mrs. Thayer and the other ladies.

Yours very truly,

W. F. Peddrick

Office of Evarts, Choate & Beaman,

Wm. M. Evarts,
Joseph H. Choate,
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland, No. 52 WALL STREET.
Prescott Hall Butler,
Allen W. Evarts.

New York, June 29th, 1889.

Professor James B. Thayer,
Cambridge,
Massachusetts.

My dear Professor,

I send you herewith the following drafts.

1. The Militia.
- (2. Suffrage and Election, already sent.)
3. Public Institutions.
4. Public Officers Generally.
5. Amendments etc, to the Constitution.

Mr. Williston will supply you if he has not already done so, with drafts of

1. Local Government.
2. Taxation and Revenue.
3. Public Property.
4. Schools and School Lands.

The subject of corporations I will retain for further consideration, but will try to send you a copy some time next week.

As I stated in my last letter, I expect Mr. Villard and Mr. Beaman to return on Wednesday next, when I will have an opportunity I hope of meeting them.

I have taken the precaution to have revised the various drafts which have already been sent to you, so that when we meet, I may be able to suggest numerous modifications.

Since writing the above I have received a telegram from St. Paul inquiring whether the draft was completed, and stated that it would be needed very soon. I replied that it was now nearly all in your hands and that in a short time the residue would be sent you.

Of course you will see that I have not been precise in numbering the headings or the articles. My intention is to leave this to the last when I shall have perfected my synopsis; but of course I will make no change that will substantially alter the arrangement already made.

You will find it difficult in revising the draft to understand the origin of some of the provisions and the authority for others. When we meet, which I hope will be before very long, I will be able to explain to you these things. How much time we will have after the 1st of July I cannot now tell, but I should be very sorry to have my work cut short without a careful revisal.

Please inform me at your early convenience of the prospects of your work, unless you prefer to write directly to the other gentlemen.

Yours very truly,

W. F. Peddrick.

7 E. 72d Street,
New York, 29/6 1889

Dear Sir,

I was very sorry to receive your dispatch that illness prevented your coming. I sincerely hope that it is only a temporary indisposition & that you will be able to come here Saturday.

Please let me hear from you on this point.

Truly,

H. Villard

Office of Evarts, Choate & Beaman,

Wm. M. Evarts,
Joseph H. Choate, No. 52 WALL STREET.
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland,
Prescott Hall Butler,
Allen W. Evarts.

New York, July 3 1889

My dear Professor,

Your letters of the 1st. and 2d. have been received.

As I understand it, all the draft is now in your hands, with the exception of "Corporations" and "The Schedule."

I will send you the new constitutions of Maine, Geo., and Louisiana tomorrow or next day; that of Florida as soon as received. I have telegraphed for it.

In the N.Y. Herald this morning is a long article on the new States. I will send you a copy.

I received a telegram to send draft, etc., to Wash. Terr'y. and to St. Paul. I sent the analysis and volumes, but not the draft. Mr. V. has arrived at his country seat. I wrote him at length. It is very important that I should see him forthwith; so I think I will call on him tomorrow or Friday.

I refrained from sending the draft lest it should in its present shape mislead or be misunderstood. But upon conference I may change my mind.

I am still very hard at work. There is much yet to be done, and I apprehend we will have very little time.

Yours sincerely

W. F. Peddrick

Prof. James B. Thayer
Wayman Lane,
Bar Harbor, Me.

P.S. I will write you as soon as I have a conference.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at 333 pm July 5 1889.

Dated New York 5

To Prof Jas B Thayer

Wayman Lane

BH

Thought best you come here at once with all papers answer

W F Peddrick

THE WESTERN UNION TELEGRAPH COMPANY.

Received at 605 on July 6 1889

Dated New York

To Prof J B Thayer BH

Deem it highly desirable to come as soon as possible otherwise
danger of being too late

H Villard

THE WESTERN UNION TELEGRAPH COMPANY.

Received at 7:45 pm July 6 1889

Dated New York 6 Via Cambridge Mass 6

To Prof J B Thayer Wayman Lane BH

Deem it highly desirable to come as soon as possible otherwise
danger of being too late

H Villard

THE WESTERN UNION TELEGRAPH COMPANY.

Received at 1130 July 6 1889

Dated New York 6

To Prof James B Thayer

W[a]yman Lane BH

Telegram received will expect you tuesday or wednesday

W F Peddrick

THE WESTERN UNION TELEGRAPH COMPANY.

Received at 12.59 7/8 1889

Dated Dobbs Ferry NY8

To J B Thayer

Report at office tuesday

Villard

[Handwritten Note.] R.O.N. July 12, 99.[sic]

34 Broad Street,

New York, July 11, 1899 [sic]

Professor James B. Thayer,

Cambridge, Mass.

Dear Sir:— I hand you herewith statement of your account with me, showing balance of \$331.64 in my favor, which I hope you will find correct upon examination. You will notice that another dividend of 2% was paid on the Rocky Fork stock on 1st. instruct, which I hold for your account, according to dividend notice herewith enclosed.

Yours truly,

H. Villard

[Statement follows this letter.]

Professor J. B. Thayer, Cambridge, Mass.

In account with

Henry Villard, New York.

| | Db. | Cr. |
|------------------------------------------------|---------------|---------------|
| 1899 [sic] | | |
| Jan. 1 To Balance as per account rend. | 423.18 | |
| July 1 To Interest 4% | 8.46 | |
| July 1 By 2% dividend on 50 shs. Coal Stock | | 100.00 |
| Balance | | 331.64 |
| | <u>423.18</u> | |
| | <u>431.64</u> | <u>431.64</u> |
| July 1 To Balance | \$331.64 | |

New York, July 11, 1899. [sic]
 Henry Villard
 On hand: \$5000 (or 50 shares) Rocky Fork
 Coal Company of Montana Stock.

Dictated

Mills Building,
 New York, July 16, 1889

Professor

J.B. Thayer
 Bar Harbor, Me.

Dear Sir:

I am directed by Mr. Villard to send you, in answer to yours of 14th inst. to him, the enclosed cheque in payment of your bill.

Yours truly,
 C. A. Spafford,
 Private Secretary

[V's services \$500.
 & _____ \$ 53.
 \$553]

[Handwritten Note.] R — July 10, a. by letter re copy & teleg. July 20.

Office of Evarts, Choate, & Beaman,

Wm. M. Evarts,
 Joseph H. Choate,
 Charles C. Beaman, No. 52 WALL STREET.
 J. Evarts Tracy,
 Treadwell Cleveland,
 Prescott Hall Butler,
 Allen W. Evarts,

New York, July 18, 1889

My dear Professor,

Your postal card was received yesterday. The dates of the more recent constitutions (excepting Cal.) are

| | |
|-----------|---------------|
| Louisiana | July 23, 1879 |
| Maine | Feb. 23, 1876 |
| Georgia | Dec. 5, 1877 |

Florida ----- 1885

I send you by this mail a copy of the latest edition of the constitution

Yours truly

W. F. Peddrick

Prof. Jas. B. Thayer
Bar Harbor, Maine

Copy/

Bar Harbor, July 20,

Dear Mr. Peddrick,

You dlvd. me by the mail of last night what you describe as "the last Edition of the Constitution," and as no other word of explanation is offered I must assume that it is sent as being merely another form of the document which I approved & of which I brought home a printed draft.

Why then insert considerable parts which I rejected? And why wholly recast the instrument and bring it under an arrangement which I had rejected? The form was a matter of repeated discussion with us and I had definitely and repeatedly declined to adopt this one. Why do you insert the synopsis? That also I had rejected for any purposes of our work.

I must disavow the instrument in its present shape and request, if I am to have any responsibility for it or to be in any way connected with it, that it be restored to the shape in which I left it. These changes of form and substance are important, and they are not approved by me as they were not authorized by me. Indeed they *were distinctly rejected*.

I say all this upon the supposition that this is put forward as in any way the document which I assented to.

If it be something new, — your own, — then, of course, my remarks have no application. But in that case why is the paper sent to me as the "last Edition"? It is the first Edition which has met my eye.

I telegraph you to-day that I disapprove of this form; and the same also to Mr. Villard; for it must not go out as mine.

Truly yours,

J. B. Thayer (per L.R.J)
W. F. Peddrick Esq.

Thank you for the dates. I regret very much the necefisty [sic] of writing this letter.

[Handwritten Note.] Telegraphed July 20 (morning) to Peddrick. "I disavow document in present shape. Restore the other one." and to Villard.

"I disapprove Peddrick's changes except annotations, and had rejected them. Restore other form. I disavow this."

[Undecipherable Handwritten Note on the July 2[—] letter.]
Dictated

Mills Building
New York, July 2[—], 1889.

Dear Professor:

I had your telegram and also your letter of July 21st.

I am sorry this dissonance has occurred in the last stages of our work. I know only that certain changes have been made, but I do not know what they are, because Mr. Peddrick had them made by the printer and sent the amended constitutions to the West without my having seen them. I have had a copy at home for two days, but have not found time to make the comparison. I have not seen Mr. Peddrick at all, but I learn from Mr. Beaman that he is very much taken aback by your letter.

Truly yours,

H Villard

Copy-
New York July 25 1889.

My dear Professor,

I received your telegram and your letter both dated the 20th inst. and have given them careful consideration.

The two documents are so unlike that they cannot possibly be confounded.

I did all in my power to put in good shape and to expedite the printing of the draft which you approved. I sent copies to the west under instructions, distributed a few here, [a page could be missing here] and to my knowledge, by any one Else, to substitute one of these drafts for the other. Under the circumstances, it seems to me that the phrase "last Edition of the Constitution," Even if it were more ambiguous, ought not to have given rise to the misapprehension it did.

You are right when you say you rejected my plan of arrangement, and I duly informed Mr. Villard to that effect.

From [Peddrick, W. F.?)

[Handwritten Note] R July 26, A July 27, answer not sent bac. & otherwise letter came & I — that. only July 31 in acknowledge on — — const Florida — — —. I am much obl. to — for a copy of the const. & ———. I have also rec. "letter of July 25."

J.B. Thayer Papers
MS Box 18, Folder 16

Office of Evarts, Choate & Beaman,
Wm. M. Evarts,
Joseph H. Choate,
Charles C. Beaman, No. 52 WALL STREET.
J. Evarts Tracy,
Treadwell Cleveland,
Prescott Hall Butler,
Allen W. Evarts.

New York, July 25 1889

My dear Professor,

I received your telegram and your letter both dated the 20th inst. and have given them careful consideration.

The two documents are so unlike that they cannot possibly be confounded.

I did all in my power to put in good shape and to expedite the printing of the draft which you approved. I sent copies to the west

under instructions, distributed a few here, and handed you one or two on Thursday morning the 11th when you called. I also then informed you of what I had done. There my functions ceased except that I was in readiness to make any amendment or alteration which you might afterwards suggest. And I think I on several occasions intimated that I had nothing to do with the documents after they left my hands.

Moreover it was clearly understood that their origin should at least for a while be kept private. Of course your disavowal is appreciated by me; but as far as I am concerned, I cannot represent either one thing or the other, for, as I said above, my business with the papers ceased when they left my hands, and I made no representation whatever in forwarding them.

You ask that the draft as you approved it should be restored. What am I to understand by this? I ordered forty or fifty copies, and after disposing of a portion, I find there is quite a number left, to be used whenever called for. Nothing whatever has been done by me or, to my knowledge, by any one else, to substitute one of these drafts for the other. Under the circumstances, it seems to me that the phrase "last edition of the constitution," even if it were more ambiguous ought not to have given rise to the misapprehension it did.

You are right when you say you rejected my plan of arrangement, and I duly informed Mr. Villard to that effect.

Yours truly,

W. F. Peddrick.

Prof. James B. Thayer Bar Harbor Me.

[Handwritten Note.] R & A July 27, 89.

J.B. Thayer Papers
MS Box 19, Folder 7

Dictated.

Office of Evarts, Choate & Beaman,

Wm. M. Evarts,
Joseph H. Choate,
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland,
Prescott Hall Butler,
Allen W. Evarts.

Confidential.

No. 52 WALL STREET.

New York, July 25th, 1889

Professor J. B. Thayer,
Bar Harbor,
Maine.

My dear Professor Thayer,

Mr. Peddrick showed me on Tuesday morning July 23rd, your letter to him dated the 20th. I was not able to give the matter attention then and did not understand the subject of the letter as I now do. I today having a little leisure, asked him what he had written to you and he showed me a copy of his letter to you of today's date, which has already gone. On making further inquiry of him, I have found the facts about as follows:

You were here consulting with Mr. Peddrick on Tuesday and Wednesday July 9th and 10th, at which time I saw you. You told me as we were breakfasting together that in effect, as I understood, you had revised and arranged a form of constitution which was in your opinion satisfactory, but that you had rejected a certain form of synopsis or plan of arrangement which had been proposed by Mr. Peddrick. I heard nothing more of the matter, but saw that Mr. Peddrick was busy sending out the prints of the constitution which I supposed you had approved. He tells me that on the 10th, he did send printed copies of this constitution to Tacoma to Mr. Paul Schultze and to St. Paul, to Mr. McNaught, five copies to each. This was Wednesday July 10th. Mr. Peddrick has shown me a press copy of the letter that he wrote at the same time to Mr. Schultze and Mr. McNaught, in which he says that he sends five copies of the first draft of a new constitution in accordance with instructions, and that it has been prepared after a great deal of

labor, but the time has been brief, and that in a few days he would send him substantially a new constitution "arranged according to the plan I prepared" and of which I sent you some copies. I commend both Instruments "to you and trust we will have some success."

The language of the press copy is not clear, and there may be some inaccuracies in what I have above written with Mr. Peddrick's help. This draft constitution sent on July 10th, I shall hereinafter speak of as the Thayer draft. It seems that after you had left on July 11th, Mr. Peddrick began at once the printing of another draft constitution from an entirely new setting up of type. This new constitution as I understand it, is in effect the draft constitution which Mr. Peddrick originally submitted for your approval and which in some particulars you rejected and which in general arrangement you disapproved. In this new draft constitution Mr. Peddrick tells me that he embodied some of the suggestions which had been made by you in the Thayer draft. This draft constitution I will hereinafter call Peddrick draft No 1. Peddrick sent to Schultze and to McNaught on Saturday night, the 13th, and without any letter or telegram of which he has kept a copy, and on Monday the 15th, Mr. Peddrick sent copies of this Peddrick draft No 1. to Mr. Villard without any special information as to the difference between Peddrick draft No 1. and the Thayer draft, or without any information to specially indicate that there was any difference between them. On this same day, Monday the 15th, Mr. Peddrick learned that Mr. Villard wanted to see him and he afterwards went and saw Mr. McNaught who suggested certain changes in Peddrick draft No 1. Thereupon telegrams were sent by Mr. McNaught to Schultze and to St. Paul, in effect countermanding the use of any copies already sent them making no distinction so far as I know between the Thayer draft and Peddrick draft No 1. and immediately new prints were made of the Peddrick draft No 1. and to this new print Mr. Peddrick added his synopsis and his table of authorities, and this draft constitution I shall hereinafter speak of as Peddrick draft No. 2. These Peddrick drafts No 2. were sent off by Mr. Peddrick to St. Paul, Bismarck, and Tacoma, on Wednesday the 17th, without any special message or letter of which any copy has been kept, and Mr. Peddrick thinks there was no letter or telegram, and on the next morning, Thursday the 18th, Mr. Peddrick sent to you and to Mr. Villard and to Mr. McNaught, copies of this Peddrick draft No 2. which in the letter to you he described as the last edition of the constitution.

It happened that I for a moment on Tuesday the 16th, saw Mr. McNaught and talked with him about his suggested amendments in Peddrick draft No 1. and when I read your letter yesterday, I supposed that you were troubled because these changes had been made in the draft constitution which you had approved. I had not the least idea until today when I talked with Mr. Peddrick that there had been anything but the Thayer draft and such revisions therein as Mr. McNaught had suggested. Immediately when I discovered the facts as before stated, I went with Mr. Peddrick to Mr. Villard, and I found that Mr. Villard apparently had no more knowledge than I that there were two distinct draft constitutions, one approved by you, and one approved by Mr. Peddrick, and embodying certain provisions and arrangements which you had disapproved. Mr. Villard has not had any intention, as I understand it, of saying to any convention, who was responsible for or who had drafted these constitutions, but he undoubtedly did intend that the draft constitution that was presented should have in a general way your approval. Of course he knew that the changes that were made here by Mr. McNaught did not have your approval, or rather were made without your knowledge.

It has now probably happened that your draft constitution has not been presented to any convention, and that the Peddrick draft No 2. is the only draft constitution that has been presented. I see nothing in the correspondence to indicate that Mr. Peddrick intended to give any information to anybody as to the authorship or approval of either of the drafts by you or by him, or in any way to distinguish which had your approval or which was without your approval. As Mr. Peddrick at once sent you this copy of his draft No 2. and called it "the last edition of the constitution," I think that he must have done so knowing perfectly well that you knew it was different from what you had approved, and I feel that he understood of course that you would know that it was his and not yours. This knowledge *you* would have as soon as you saw this peddrick draft No 2. But there was nothing in the statements that I can find of Mr. Peddrick to Mr. Villard or to others which clearly indicated that one of these drafts was yours and one was Mr. Peddrick's.

Now Mr. Peddrick is present as I dictate this letter and he tells me that he had no reason to know or think that the delivery of the Thayer draft to the various conventions was stopped. As to that I have no knowledge. The Thayer draft left here on Wednesday the

10th, the Peddrick draft No 1. on Saturday the 13th, and on Tuesday the 16th, Mr. Peddrick knew that Mr. McNaught was telegraphing to stop the delivery to the conventions of certain of these drafts. Whether this stopping referred to the Thayer draft or to the Peddrick draft No 1. Mr. Peddrick had no knowledge and nothing was said to him about it other than that McNaught would telegraph to stop the delivery of the drafts. Undoubtedly the draft that Mr. McNaught had in mind was the Peddrick draft No 1. which was the draft that Mr. McNaught had corrected and which very likely was the only draft that Mr. McNaught had ever seen, for Mr. McNaught left St. Paul before the Thayer draft had reached there.

I send a copy of this letter to Mr. Villard tonight. He will not be in town again until the 29th. I also send a copy of it to Mr. McNaught.

I write this letter without having any opinion at all as to any merits or demerits in Mr. Peddrick's drafts. He has given a great deal of time and labor to this work and I have no doubt he has done the best he could to produce what in his opinion would be the best draft and arrangement of a constitution. He has had a different opinion from you as to what was the best constitution, and in my opinion has made a mistake in not letting at least Mr. Villard clearly understand that there were such things as Thayer drafts and Peddrick drafts. Mr. Peddrick may have thought that Mr. Villard knew the difference between the draft constitutions, for even a hasty examination of the Thayer draft and the Peddrick draft No 1. would show that they were different. The fault has been in not clearly indicating to Mr. Villard not that there were differences, but that one was approved by you and the other was approved by Mr. Peddrick.

I need not say to you that I regret exceedingly the existing situation.

Yours very truly,

Charles C. Beaman

[Handwritten Note.] R & h, July 26. Enclosing copy of my letter to Beaman in envelope — addressed to me for return.

Thorwood, July 26 89

Dear Professor,

I dare say that my last may have struck you as a rather insufficient reply to your complaint of Peddrick. Beaman's letter to you, that precedes this, explains the reason of this viz: that I did not know & could not understand therefore what you were really complaining of. I supposed that you were offended at the few and not important changes that I authorized McNaught to make in the constitution you had approved, because your consent to them — which to obtain there was no time—had not been first asked, & to speak frankly, I did not deem this omission as justifying your protest. Now, that I understand the real facts of the case, I not only appreciate your indignation at Peddrick's conduct, but I share it & so does Beaman. I cannot help saying that P. acted most presumptuously & in bad faith towards yourself & we for

1. he *never* asked my consent to the printing of his constitution nor did I know till yesterday what he had actually done with it.

2. there was a distinct understanding between us three that your constitution alone should be used & that his plan should be considered as dropped.

3. he failed to come near me after receiving your dispatch and letter, though he was the only person that could explain their meaning & only put in an appearance yesterday with the rather blind letter to you which he showed to me without any explanation, not even making one when I remarked that I could see no occasion for irritation on your part!

The worst feature of his performance is that it is likely to defeat

entirely our object by the confusion the reception of three constitutions must have necessarily created. Is it not a queer business?

Truly yrs

H Villard

Copy-

Bar Harbor July 27 1889

[Partial copy; letter appears incomplete.]

(Confidential) (Letter posted July 28)

Dear Beaman

Thank you for your letter of the 25th which puts in a clean light this matter of Mr. Peddrick's. His own letter of the 25th left me still much in the dark.

Let me say at once that nobody could possibly have less personal feeling about this thing than I have — so far as identifying myself with the draft No 1. is concerned or caring at all [to] have my name connected with it. That was merely as good a draft — as I could shape out of the material furnished in the time allowed and at the same time could hope to see at all favored at the West. It is not the sort of thing which I believe in, i.e. a very short and simple instrument.

And again, I shouldn't — of being troubled at changes made by Mr. McNaught or any of Mr. Villard's Western men. I have never believed that they would take our draft without changes.

But surely it was a very surprising & quite inexplicable thing to find that Mr. Peddrick had composed a constitution *of his own* and sent it out with no authority from Mr. Villard and without one word of conference with me. Remember that Mr. Villard at my first interview with Peddrick said, in the latter's presence, what he has always said, that he wished me to determine absolutely upon the final form of the instrument. Everything went forward upon that basis. Of course this would have been hardly worthwhile if Mr. Peddrick was also to prepare an instrument of which he was to determine the final form.

Is it possible to explain P's silence as to his purpose of sending out a document of his own, giving no explanations whatever, apparently from the same source as the other, when I was there, consistently with good faith to Mr. Villard & to me? Observe I was still in New

York when he visted on Wednesday to the West, of his purpose, and not one syllable is intimated to me of any such purposes. I saw him on Thursday morning and carried to him Mr. Villards instructions to annotate the draft with the sources from which it was taken, & to print fifty copies. Still not a word of any purpose to construct a different draft. Mr. Villard dreamed, no more than I, of any such scheme. Peddrick did not annotate the draft No. 1. but preceded to annotate his own work & to send that out. He was to send me a few copies of the draft when it should be in its final shape, none came until the one which you designate as Peddrick No. 2. and that came as "the last edition" with no explanation whatever. I telegraphed at once my repudiation of this and my request for the restoration of the other. The conceptions of two rival drafts offered for the choice of our Western brethren was a novelty, not then & hardly now intelligible to me. Mr. Peddrick has succeeded, you will observe, in defeating Mr. Villard purpose and in supressing all of which *he* did not approve. I cannot think his conduct at all ingenuous. But it isn't my funeral, and with these explanations and

Copy.

St. Paul, Minn. July 29th, 1889.

My dear Mr. Beaman:-

I received your communication of July 25th, enclosing copy of a letter written by you to Professor J. B. Thayer on the same day.

The draft of the constitution containing the amendments suggested by me reached Bismarck too late to be presented to the Convention. Mr. J. C. Bullitt, Jr. acting for the N[orthern]. P[acific]. in connection with Mr. Williams, a member of the Convention, and two or three other lawyers, prior to the receipt by Mr. Bullitt of the first draft sent by Mr. Peddrick, changed the same by striking out of it all the provisions relating to corporations and taxation, and inserted therein, to a very great extent, the provisions of the Wisconsin Constitution, and had the pages so inserted reprinted, using, with these exceptions, the original draft of the constitution sent by Mr. Peddrick. Mr. Bullitt's impression after reading your letters, is that the draft of the constitution used by him and his associates, is the Thayer draft. It was used by them because it was shorter, and they could eliminate objectionable portions from it and reprint the same with less expense, and complete

the revision quicker than by using the other. Mr. Bullitt will send me, within two or three days, a copy of the draft of the constitution used by him and his friends. The draft of the constitution as last sent out by Mr. Peddrick would have been very satisfactory to the convention had it arrived in time, but so much of the work had already been completed, and provisions differing a little in phraseology agreed upon, that although the Williams Constitution, as it is called here, will be considered by the Convention tomorrow, we are quite satisfied that the convention, having passed upon and settled by vote so many of the provisions, that it will now not undo the work it has done.

Our friends in the Convention are using to their great advantage the index, synopsis and other material furnished by Mr. Peddrick.

Yours truly,

(Signed) James M'Naught,
Counsel

C. C. Beaman, Esq.,
52. Wall St.,
New York, N. Y.

[Undecipherable Handwritten Note on the July 31 letter.]

Office of Evarts, Choate & Beaman,

Wm. M. Evarts,
Joseph H. Choate, No. 52 WALL STREET.
Charles C. Beaman,
J. Evarts Tracy,
Treadwell Cleveland,
Prescott Hall Butler,
Allen W. Evarts.

New York, July 31, 1889.

Professor James B. Thayer,
Bar Harbor,
Maine.

My dear Professor Thayer,

I have received your two recent letters and have read to Mr. Villard the first one and he has also shown me your letters to him.

I enclose a copy of a letter just received from Mr. McNaught with reference to what has taken place at St. Paul, and from which it

appears that what I have called the "Thayer draft" was the only one that was presented in the South Dakota Convention.

Yours very truly,

Charles C. Beaman
