

A Georgian, Gazette of the State of Georgia, 15 November 1787

Through the channel of your paper we have lately been favored with the new Federal Constitution, the plan of which I must confess I like, and it is my heart's wish to see a federal constitution established agreeable to the principles of republican liberty and independence, and on the basis of a democratical government, meaning that of the people, being that very government intended by our glorious Declaration of Independence.

Though this new Federal Constitution, I believe, was framed and intended for the good of the United States and, as we are well aware, was assented to by the political saviors of our country, to whom all deference and respect is due, yet the sacredness of these illustrious characters has not been sufficient nor able to prevent several articles from creeping into the said Constitution which, by their different constructions and great latitude given them, an American Sulla or Augustus Octavianus might one day or other make serviceable to his ambition, interest, and to the utter subversion of our SACRED FREEDOM. And as mankind, upon the whole is so depraved as, with pleasure, to trample upon the sacred rights and privileges of their fellow creatures, it is certainly one of our greatest cares, both for ourselves and our offspring, to frame such constitutional laws thereby to prevent such designing tyrants (if ever they be) from grasping at a power, to our destruction, in the said Federal Constitution within their reach; as also to guard with the safest care against all encroachments, and to bar them forever from paving the way to what is worse yet, an ARISTOCRATICAL government, whereby about 70 nabobs would lord over three millions of people as slaves; as also to establish power, harmony, equality and justice, for and among the whole of the United States.

I agree, as it may be said, that the Articles of the Confederation are defective; and, to make it answer effectually the purpose of a federal government, it is to be observed, delegates from all the states, except Rhode Island, were appointed by the legislatures, with this power only, "to meet in Convention, to join in devising and discussing all such ALTERATIONS and farther provisions as may be necessary to render the articles of the confederation adequate to the exigencies of the Union." This was the only power in them vested, and, in conformity to it, had they added to the Articles of the Confederation a power to Congress, viz., to regulate foreign and internal trade, to lay and collect duties and imposts, uniform throughout the United States, to have the sole legislative power in maritime matters, to have a coercive power to enforce the payment of the quota of each delinquent state, but to leave internal taxation and excise to the management of each individual state, the legislature thereof being certainly best acquainted with that important business, all would have been well and our federal government as good and fully adequate to its exigencies as could have been wished. But as this Convention has thought fit to destroy such an useful fabric as the Articles of the Confederation, with the before mentioned amendment and addition, would have been, and, on the ruins of that, raised a new structure rather favorable to aristocratical and destructive to democratical government, and as it seems not to have that equality and

justice for its basis [that] it certainly ought to have among confederated, free, and independent states; I wish to point out the few articles inconsistent with such a constitution and also to try the remedies thereof, hoping by that means that my fellow citizens will, by a candid second reading of said Constitution, agree with me in the impropriety of such articles, and [by] their united wisdom, in a convention guided by the love of their country, and answering the benefit of the whole, will improve the remedies and so establish a federal constitution capable of deterring any ambitious men from making an use of it to our destruction; as also to keep alive and in due harmony the Confederation among the united independent states lately so dearly purchased from the government of Great Britain, because that meant "TO BIND US IN ALL CASES WHATSOEVER." But now to the point itself.

Article I, section 2. This section mentions that, within three years after the first meeting of the Congress of the United States, an enumeration shall take place, the number of Representatives not to exceed one member for every 30,000. This article I believe to be inadmissible: 1st, it affording too small a representation (supposing 48 at the highest calculation) and especially in the Southern States, their climate, soil, and produce, to a large extent back, not being capable of that population as in the Northern States. Would it not therefore be better to increase the number of Representatives, say one member for every 20,000 for the states north of Virginia and one for every 15,000 south of the said state, itself included? Or, 2dly, divide the states into districts which shall choose the Representatives, by which every part of a state will have an equal chance without being liable to parties or factions? Should it be said it will increase the expense, it will be money well laid out, and the more so if we retain the paying them out of our own hands; and, supposing the voting in the House of Representatives was continued as heretofore by states, would it not be more equal still? At any rate I would strenuously recommend to vote by states, and not individually, as it will be accommodating the idea of equality, which should ever be observed in a republican form of government. Or, 3dly, if it was in proportion to the quotas of the states, as rated in taxation, then the number of members would increase with the proportion of tax, and at that rate there would always be an equality in the quota of tax as well as representation; for what chance of equality, according to the Constitution in question, can a state have that has only one or two votes when others have eight or ten (for it is evident that each Representative, as well as Senator, is meant to have a vote, as it mentions no other mode but in choosing the President)? And as it is generally allowed that the United States are divided into two natural divisions—the Northern as far as Virginia, the latter included forms the Southern—this produces a wide difference in climate, soil, customs, manners of living, and the produce of the land, as well as trade, also in population, to which it is well observed the latter is not so favorable as the former, and never can nor will be, nature itself being the great obstacle. And when taxation is in agitation, as also many other points, it must produce [a] difference in sentiments, and in such a dispute how is it likely to be decided? According to the mode of voting, the number of members north of Virginia the first three years is 42, and the Southern, Virginia included, 23; and, when the enumeration takes place, the odds is somewhat more, say 32 North and 16

South. Is human nature above self-interest? If the Northern States do not burthen the Southern in taxation, it would appear then really that they are more disinterested men than we know of.

Out of these observations I shall leave my fellow citizens to join in an amendment necessary in this section.

Article I, section 4. What advantage can accrue to Congress to have the power to order where, or in what part of the state, the Senators or Representatives, agreeable to this and the second section, are to be chosen in each state? And, for fear they should convene the State of Georgia at Bourbon or Shoulderbone, I would advise that the words, "but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators," be erased.

Article I, section 6. What advantage can it be to Congress to have the power to pay themselves? And yet it may be very detrimental to the states. May they not do as the members of a certain state assembly did, spend most of the money raised by the taxes in paying themselves? And why is their salary not fixed? For who can say how the Senators or Representatives may incline to live? Perhaps much better than we can afford to pay. Also, is it meant by this section that a member, either of the Senate or Representatives, is not to account for his acts to his constituents? If so, this is contrary to the idea entertained by freemen who delegate their power for a limited time. That the representative should be called on by his constituents to answer and give his reasons for his measures is one of the firmest barriers to liberty. Therefore I would propose this section to read thus:

"Article I, section 6. The Senators and Representatives shall receive a compensation for their services, not exceeding five dollars per day, during their attendance and going to and coming from Congress, to be paid out of the treasury of their respective states. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same. And for any speech or debate in either house they shall not be questionable in any other place, except when they shall be called upon for that purpose by their constituents."

Article I, section 8. The words TAXES and EXCISES are inadmissible, and I would recommend them to be expunged; for, by this section, as it stands, there is no limited taxation and no check. Should not rather the civil list and other arrangements suitable for a peace establishment, together with debts and interests due, have been made out and laid before the house? Let this sum then be the tax in times of peace, assess each state with its quota, call it in by a certain day, and, if not paid, let Congress by all means have the necessary compulsory powers. And in case an unlimited taxation in actual war is to be given, let it cease positively immediately on the return of peace. Remember the civil list of England was, not many years ago, but a few hundreds of pounds, and now it is far above a million, and yet there in times of peace, nay even in war, the sums and the uses must be ascertained before it is granted by Parliament. Upon the whole, [240] it can never be allowed that we can suffer ourselves to be individually taxed by Congress,

they being unacquainted with our private circumstances; but our own legislature is the only body politic to whose management it can be trusted.

That part of the 8th section respecting tribunals is utterly inadmissible; its extent being not known and without bounds, and threatening to annihilate all state jurisdictions, it ought therefore to be entirely expunged.

Also that part respecting the army I would recommend to read thus: "To raise and support armies only in times of war, invasion, insurrection, or rebellion; and no appropriation of money to be for a longer term than one year to that use. No standing armies to be kept on foot during times of peace within the United States, except what may be necessary to garrison frontier posts."

Further, that part of said 8th section respecting territorial legislation for the district where Congress resides; "confine it only to five miles square;" a larger extent might be made a nursery out of which legions may be dragged to subject us to unlimited slavery, like ancient Rome.

Article I, section 9. That part of this section respecting our home trade should have this addition, in order to prevent smuggling and a contraband trade, "but they shall be obliged to produce sealed customhouse certificates from the ports they last cleared or sailed from."

That part of the same section respecting the Writs of Habeas Corpus, let it, by your leave, read thus: "The privilege of the Writ of Habeas Corpus shall remain, without any exceptions whatever, inviolate forever."

Article 2, section 1. Would it not be necessary to say "that the President shall hold his office during the term of four years out of eight?" Query: What number of men choose a President for the important and almost unlimited trust in the United States? There are no more than 93 for the first three years, and Georgia's quota is five; and, after three years, the number of Electors will be but 76, for, I say again, 30,000 people are not so easily acquired; then the right of Georgia lies in three only for so great a trust. If a majority of 558 members have as yet been bought into the court interest in Great Britain, Query, how many offices, and how much money, will it take to buy the majority of 76 members, if ambitious men should attempt to set about it? And who can set bounds to the depravity of human nature, if not restrained by wholesome constitutional laws? Therefore let us guard against such an accident by having more Electors.

Query: Would it not be necessary to fix the day unalterably forever for choosing of Electors, and for them to give their votes for a President?

Also, would it not be well done to fix the President's salary at once, by saying he shall have 4000 dollars per annum?

Article 2, section 2. If the President should at any time be incompetent for military command in war, etc. (for he cannot be prevented from taking the chief command when it is his right) and should choose to take the command notwithstanding, what ill consequences may not result? For we know there are many wise and good men, and

very fit for civil rulers, but are quite unfit for the command of armies and navies. Would it not be better said, "That the President, with the advice of both houses of Congress, shall be Commander in Chief, etc., etc., etc."? By this clause, ought we not to look into the troubles in Holland, and see how the stadtholder (laying aside his hereditary claims) behaved, contrary to the positive orders of the States-General, his masters, during our late glorious Revolution? And has he not accumulated powers destructive to their commonwealth, and which are now the sole cause of their present troubles? And should we not avoid the like by making the President ineligible to the office as many years as you allow him to hold it? And that he only be Commander in Chief, and nominate and appoint all officers, civil and military, by and with the advice of the Senate, etc. only? Therefore I would advise the clause: "But the Congress may by law vest the appointment of such inferior officers as they think proper in the president alone," etc. be struck out.

Article 2, section 3. It will certainly be no harm, but of infinite benefit, if all continental commissions have the clause: "By and with the advice of the Senate of the United States." This will prevent the officers from looking up to the President alone as their master and benefactor. This is another observation which has come to us from Holland, where several great officers refused to serve the state of Holland against the stadtholder, saying expressly they had their commission only from him, and considered themselves under his command and no other.

And now we come to the point which at once teems with numberless enormous innovations by introducing strange and new courts of almost any denomination into any of the states whereby our own courts will soon be annihilated, and abolishing the only pledge of liberty, the trial by jury, to tyrants only formidable, in all civil cases, countenancing the greatest injustice to be lawfully, nay constitutionally, committed by the rich against their brave fellow citizens whose only misfortune is to be, perhaps, not so rich as they, by dragging their lawsuits of any denomination and of any sum, however small, if they choose, before the GRAND TRIBUNAL OF APPEAL to which the poor will be unable to follow with their evidences and witnesses, and on account of the great expenses. Therefore, fellow citizens, pray restrain this encroachment so destructive to the inestimable rights the more numerous part of middle-circumstanced citizens now enjoy. With horror beware of the precipice before you; and, if you will, please join me in amending the third Article in the Federal Constitution thus:

"Article 3, section 1. The judicial power of the United States shall be vested in one Supreme Court only, which shall be resident where-soever Congress resides, the judges and officers whereof shall hold their offices, by and with the advice of both houses of Congress, during good behavior, and shall at stated times receive for their services a compensation, which shall not be diminished nor increased during their continuance in office. The expenses attending a suit in this Supreme Court shall not exceed 60 dollars.

"Article 3, section 2. The judicial power of this Supreme Court shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting

ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction, and respecting foreign trade; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of the same state claiming land under grants of different states, and foreign states, foreign citizens, or subjects.

“In all cases affecting ambassadors, other public ministers, or consuls, and where the United States shall be a party, and between two or more states, the Supreme Court shall have original jurisdiction; but, in all the other before enumerated cases, it shall have appellate jurisdiction only, as well of law as fact.

“The trial of all civil and criminal causes, except in cases of impeachment (as provided for in Article I, section 3) shall be by jury, drawn by lot out of a box from among the freeholders of that state where Congress shall reside, and within five miles thereof; and, when a crime against the United States has been committed within no state, the Supreme Court of Congress shall have the trial of the same where Congress then resides.

“The state’s attorney in each and every state shall prosecute all criminals who have committed crimes against the United States. Such trial shall be held where the crime has been committed, by such state court as has jurisdiction of the vicinity.”

Article 4, section 5. At the conclusion of the fourth Article, add: “The freedom of the press, and trial by jury, shall be held sacred and inviolate throughout the United States forever.”

Thus, fellow citizens, have I pointed out what I thought necessary to be amended in our Federal Constitution. I beg you to call to mind our glorious Declaration of Independence, read it, and compare it with the Federal Constitution; what a degree of apostacy will you not then discover. Therefore, guard against all encroachments upon your liberties so dearly purchased with the costly expense of blood and treasure. Show that you have yet that noble spirit, and provide remedies against the numberless evils of an unlimited taxation, against the fatal effects of a standing army in times of peace, against an unfair and too-small representation. Let your suffrages at elections never be suffered to be regulated by laws at pleasure, but let it be stated and fixed. Let the trial by jury in civil and criminal causes, and the liberty of the press, be forever sacred and inviolable. Let Congress, for God’s sake, not have that power of jurisdiction sought after to our destruction, but confine them to a territory of five miles only; and to only one Supreme Court and allow them none extraordinary [inferior federal courts]. Neither [allow] appeals [to the Supreme Court] in cases between citizens, whereby the rich may fly from justice, and the poor unable to follow them. And, at this rate, I am confident you will establish a government which will be lasting and a blessing to ourselves and generations hereafter.

Having now discharged my duty, which as a citizen I owe to God, to my country, and myself, I leave you to judge for yourselves, and I hope you will act as becoming freemen and the guardians for your offspring.

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