

Aristides: Remarks on the Proposed Plan, 31 January 1788

It is my intention, with all possible plainness, to examine the proposed plan of a federal government. Its enemies and its advocates have laid particular stress on the names, wherewith it is subscribed. As one side would obtain your implicit assent, by a reference to characters, and as the other would defeat measures, by exciting your jealousy of men, permit me, in the first place, to make some general observations on the persons who composed the late memorable convention.—

In general, they had been distinguished by their talents and services. They were not principally the men to whom the idea of a convention first suggested itself, and it is notorious, that, in general, they accepted their appointments with reluctance. It would seem, however, according to some vague insinuations, that, no sooner did they find themselves convened, than their natures became changed; and fatally have they combined for the destruction of your liberties. Now this altogether shocks my faith. I should sooner imagine that the sacredness of the trust, the unparalleled grandeur of the occasion, and the fellowship of the great and good, might have elevated the soul of the most abandoned wretch, had it been possible for such(f) to obtain a seat in that illustrious assemblage.

If those, who would inspire suspicion and distrust, can suggest any precise idea, it must be this, that the members of the convention will be elected into the first federal congress, and there combining again will compose a body capable of bearing down all opposition to their own aggrandisement.

By their scheme, however, thus deeply concerted, the house of representatives is to be chosen by the people once in two years; and if they have acted so as to warrant any reasonable apprehension of their designs, it will be easy, at any time, to prevent their election. The truth is, that very few of them either wish to be elected, or would consent to serve, either in that house, or in the senate. I have exercised my imagination to devise in what manner they, or any other men, supposing them to bear full sway in both houses, could erect this imaginary fabric of power. I request any person to point out any law, or system of laws, that could be possibly contrived for that purpose, obtain the final assent of each branch, and be carried into effect, contrary to the interests and wishes of a free, intelligent, prying people, accustomed to the most unbounded freedom of inquiry. To begin by an attempt to restrain the press, instead of promoting their designs, would be the most effectual thing to prevent them.—

I am apprized of the *almost* universal disposition for the increase and abuse of authority. But if we are to with-hold power because there is a possibility of its perversion, we must abolish government, and submit to those evils, which it was intended to prevent. The perfection of political science consists chiefly in *providing mutual checks amongst the several departments of power, preserving, at the same,(g) the dependence of the greatest on the people*. I speak this with reference to a single government. The necessity of another species of government, for the mutual defence and protection of these American states,(h) no man of sense and honesty, that I know of, has ever yet denied.

The convention had the above principle constantly in their view. They have contrived, that it shall be extremely difficult, if not altogether impracticable, for any person to exceed or abuse his lawful authority. There is nothing in their plan like the cloathing of individuals with power, for their own gratification. Every delegation, and every advantage that may be derived to individuals, has a strict reference to the general good.—

To examine their constitution, by article and section, would be a painful and needless undertaking. I shall endeavour to answer such objections, as I have already heard, to anticipate others; to point out some advantages not generally known; and to correct certain errors, with respect to construction. When the convention was appointed, I much feared, that the numerous seeds, and principles of discord amongst the states, would, for ever, prevent them from agreeing to any efficient system whatever. I apprehended, in particular, that the dispute about representation would be the rock, on which the vessel containing all our hopes would be dashed. When, therefore, I discerned that equitable compromise between the larger and lesser states, my anxiety was instantly removed, and my soul enlightened by a sudden ray.

How then was I, some months after, disgusted at the repetition of the arguments, respecting the inequality of representatives in the first branch.¹ We were told, that the minority in convention reasoned upon first principles, that, as all men, in a state of nature, are equal with respect to rights, so also are equal all separate and distinct states;—that, when individuals form a free government, they must all have equal suffrage, either in framing laws by themselves, or in choosing representatives, although one man be ten times stronger, richer, or wiser, than another; so also, when several states unite, for common convenience, they must meet on terms of perfect equality, although one be ten times more wealthy, extensive and populous, than another;—that, under our present compact, the states are equal, and that no injury has resulted from the equality.—

To these arguments, we may imagine, was opposed something like the following: “You talk of first principles, and, at the same time, would let 180,000 free inhabitants of Maryland have no more to do in the choice of representatives than only 30,000 inhabitants of Delaware. Do you propose, that these 30,000 shall bear an equal part of burthens and impositions? As to no injury having resulted from the equality, as you call it, under the articles of confederation, we think the reverse; and that this pretended(a) equality was a poison, which pervaded all our affairs.”

The anticipation of arguments like these had raised those apprehensions of an irreconcilable difference. It were needless to repeat more. Had an angel been the umpire, he could propose no expedient more equitable, and more politic, not only as a compromise, but to establish such a decided difference between the two branches of congress, as will make them indeed two distinct bodies, operating by way of mutual balance and check.—

By this expedient, is safety secured to the lesser states as completely as if the senate were the only legislative body. It is possible (*if such a thing can be devised*) that, from the inequality in the first branch, propositions will be made to give the larger states some advantage over the lesser; but the equality in the senate will, for ever,

preclude its adoption. It is well worthy of remark, that not more than three of the thirteen are, at present, deemed larger states, in the peculiar sense of the word. There is no reason for supposing, in the federal, like a state, legislature, the senate will be intimidated or overawed, by the more numerous branch. A demagogue may declaim, rave, menace and foam, with as little impression as the roaring billows produce upon the solid beach. Were it not for this equality in one, and inequality in the other, a jealousy might be entertained of too perfect a coincidence of sentiment.—

The convention has been censured for an excess of its authority. But with no other power was it invested, than is possessed by every free citizen of the states. Its office was to advise, and no further has it proceeded. Had it(i) been even invested with full powers to amend the present compact, their proposed plan would not have exceeded their trust. Amendment, in parliamentary language, means either addition, or diminution, or striking out the whole, and substituting something in its room. The convention were(j) not limited. The states did not tell them,(k) this article must stand, this must be struck out, and this may be altered. The avowed object of a convention was to consult on the additional powers necessary to be vested in congress. But the members of this convention perceiving, from the experience of these states, from the history of ancient and modern states, and, I may add, from the principles of human nature, that the same body of men ought not to make and execute laws; and that one body alone ought not to do the first, have separated the executive, so far as was proper, from the legislative; and this last they have divided into two branches, composed of different materials, distinct from, and totally independent of, each other.—

The house of representatives(b) is to be the immediate choice of the people, and one man is to represent 30,000 souls. In an affair of so much importance, and in districts containing so many suffrages, it is not to be supposed, that a worthless character will succeed by those arts, which have, sometimes, prevailed in county elections. It is to be expected, that, in general, the people will choose men of talents and character. Were they even so inclined, they can choose none but men of ripe age, who have been, at least, seven years citizens of the United States, and, at the time of election, residents of the respective state. Whatever laws shall be proposed, or assented to, by these men, are to bind themselves, their children, and their connexions. If a single man, or a party, shall propose a measure, calculated to promote private interest, at the expence of public good, is it conceivable, that the whole house will be brought into the measure? Suppose it should. The measure cannot be adopted into a law, without the concurrence of another house, consisting of men still more select, possessing superior qualifications of residence and age, and equally bound by the laws. After gaining the assent of the senate, the bill must be submitted to the objections of the president. He is not in any manner dependent on the legislature, which can, in no manner, punish him, except for some crime known to the laws. He is elected by persons chosen for that special purpose. He receives a compensation, which cannot be diminished or increased, during his continuance in office. The term of his commission is limited to four years, unless he shall have acted so as to merit the people's favour. From the mode of his election, it is impossible he can intrigue to advantage; and, from the nature of other things, he will never succeed by bribery and corruption. Like any other individual, he is liable to

punishment. Finally, at the expiration of his office, he returns into the mass of the people.—

In spite of all these circumstances, an idea is gone forth amongst the enemies of the plan, and they labour to impress it on your minds, that whatever power may be exercised by these delegates of the people, will be used contrary to the interests of their constituents. This is a supposition, so repulsive to my mind, that I wonder any man of the least generosity, or reflection, can possibly adopt it. The assembly of Maryland, with respect to internal regulations, is almost omnipotent. And yet, is there a man who supposes the assembly would, intentionally, pass laws injurious to the people? Why then should we distrust the federal assembly, chosen for a short term, bound by the same ties, and selected on account of their talents and patriotism?—

But, say the objectors, although we might probably confide with safety in congress, it is not consistent with prudence, without a manifest necessity, to empower any men to do us an injury.

Whenever the proposed plan delegates authority, which you imagine might safely be denied, be assured, that a little reflection will suggest abundant reason for granting it. At the same time you may be convinced, that, as some powers were not intended to be exercised, so they never will be exercised, without absolute necessity.

I have been amused by the writings of an avowed friend to the plan. “Let no man,” says he, “think of proposing amendments. Should each person object, and should his objections prevail, not a tittle of the system will be left. You are to accept the whole, or reject the whole.” After speaking in this very sensible way, he advises the states to reject, with unanimity and firmness, the following provision.²

“Art. 1, sect. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof; *but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.*”

Can this writer imagine, that congress will presume to use this power, without the occurrence of some one or more of the cases, the contemplation whereof induced the convention to create it. These are the cases of invasion by a foreign power; of neglect, or obstinate refusal, in a state legislature; of the prevalence of a party, prescribing so as to suit a sinister purpose, or injure the general government. Others might perhaps occur to the convention. But these may suffice to evince the propriety of such a power in the federal head. It was never meant, that congress should at any time interfere, unless on the failure of a state legislature, or to alter such regulations as may be obviously improper. The exercise of this power must at all times be so very invidious, that congress will not venture upon it without some very cogent and substantial reason. Let congress, even officiously, exert every power given by this clause, the representatives must still be chosen by the people, and the senate by the state legislatures. The provision cannot by any possibility admit of a different construction.—

Should the bare appointment to congress have the magic to pervert the tempers and principles of men, I perceive not the temptation for abusing this, or any other of their powers. There are bad men to be found at times, in every numerous assembly. But, under all circumstances, I predict, that, in congress, their party will be small. Should

there be thither sent the most prostituted character, that ever acted, like a pest, to his own state; should he possess talents superior to the rest, I should have little dread of his influence, unless I could suppose, that a majority of like characters may be chosen. Even then, I repeat it—they will be under no temptation sufficient to influence a sensible mind; and no man of ripe age was ever yet wicked for the sake of wickedness alone.—

You have heard, that, by the privilege of nominating persons to office, the president will find the congress obsequious enough to pass any laws, he shall think fit to propose. It is incumbent on the authors of this suggestion to shew some interest in the president, inducing him to propose prejudicial measures. I have remarked, that under the constitution, his salary can be neither augmented nor curtailed, during his commission; and, to change the constitution, is not in the power of congress. Should he, however, devise, and endeavour to procure, some dangerous act of that body, can we conceive, that this lure will be powerful enough to corrupt a majority in each house. No member can be appointed to an office, created, or of which the profits shall be increased, during the time for which he was elected. And the expectation of such, as may fall vacant, within four years, will hardly corrupt even the smallest number, that can, in any possible case, be a majority in the two houses. To make the members of each house ineligible to any other office whatever, would be even impolitic, on account of its precluding these states from the services perhaps of its best men. And it would be unjust to deny men the possibility of benefits, which might be attained by others less deserving.

In ascertaining and defining the powers of congress, the convention evidently pursued this obvious principle, that all things, which concern the union in general, should be regulated by the federal head; and that each state legislature should regulate those things, which concern only its own internal government, together with the separate interests of its citizens. The enemies of the proposed constitution have deemed it material to shew, that such a one never existed before. It does not indeed agree with definitions in books, taken from the Amphyctionic council, the United Netherlands, or the Helvetic body. They would therefore infer, that it is wrong. This mode of reasoning deserves not a serious refutation. The convention examined those several constitutions, if such they can be called. It found them either woefully defective, as to their own particular object, or inapplicable to ours. Peradventure, our own articles of confederation, in theory, appear more perfect than any of them. These articles were made according to rule; the legislative and executive authorities being vested in one assembly. The extreme caution of its framers to secure the independence of the several states, on account of its principle, was much to be commended. But experience having fully demonstrated this constitution to be inadequate to the purposes for which it was framed, and a general conviction of its defects having occasioned the convention, it is astonishing, that attempts are now made to prefer still a theory, not founded on the nature of things, but derived merely from a few deplorable examples. If two branches in a state legislature be proper, why, in the name of common sense, are they not so in a confederate legislature?—Many instances of hasty unadvised proceedings of congress, as a legislature, have by other writers been adduced; and so long as mankind shall remain under the influence of passion or interest, there will be such proceedings in

every numerous assembly of men.

It is universally, by good writers, agreed, that where any one political body possesses *full* powers, legislative and executive, whether it be a single man, or a select few, or a numerous assembly, it matters not;—the government must, in a short time, become despotic.³ That in a free government, therefore, the legislative and executive ought to be ever distinct and separate, is a position in the Maryland declaration of rights.⁴ This hackneyed principle has been urged, with great confidence, against constituting the senate a council to the president. It has been urged too, even by the men who would have the whole powers of the federal government centered in a single assembly. I mean the men who insist that the convention ought to have done no more than advise in what manner the powers of the present congress should be increased. Let us understand the principle in its proper extent. It does not follow, that a body, whose assent is required in making laws, but who cannot, by themselves, do any legislative act, may not be a fit council to the supreme executive magistrate, deriving his authority, like them, from the people, in no manner dependent on them, or the immediate representatives of the people, for any private advantage, and possessed of no share in legislation, except that of offering his advice.

The objection to this part of the constitution, I confess, at first, appeared formidable. The reasons which I now conjecture to have influenced the convention, did not then occur. But I have long adhered to a maxim, which I warmly recommend to others—never to condemn, absolutely, even within myself, any one kind, until I can hit upon some other kind which I *conceive* better. As no human institution can possess absolute perfection, it is an easy matter to espy some fault or defect in almost every thing, which the wit of man can contrive, or, at least, to reason plausibly against it. But this faculty of finding faults is by no means sufficient to constitute the politician or statesman. I deliberated, what kind of council might be preferable, under all circumstances, to the senate. The plainest thing in nature! Exclaims he, who solves all difficulties at once. Why not appoint a body to act as council and nothing else?

One reason, and that not very unpopular, is the great additional expence. However, this reason I deem the lightest of all; and the general proposition involves a great variety of other considerations.—

It is essential to a council, that the members be free, as possible, from all bias, or improper influence. This separate and distinct council must be elected by the people, or by special electors; by the legislature, or by one of its branches; or by some other department; or by the president.—

That the people should either make laws to bind themselves, or elect persons, without whose consent, no laws shall be made, is essential to their freedom. But universal experience forbids, that they should also immediately choose persons for the execution of the laws.(I) Shall the legislature then, or the senate, or the house of representatives, have this appointment? A council thus chosen would be dependent on its electors; and it would be the same thing, in many respects, as if the legislature should execute its own laws. Can you believe, that a council, chosen annually, or once in two or three years, would dare to pursue, in all cases, the dictates of its own judgment, contrary to the known will of those, who will soon have an opportunity of removing

them? Would they not be emulous to please leading men; and would there not be opened, at every period of election, a fine field for intrigue and cabal? There would be one way only of rendering a council, thus chosen, independent of their electors; and that is, the choosing them for life, with salaries, not to be augmented or diminished.

Against choosing an executive for life the reasons are weighty indeed. Should they then hold their commissions during good behaviour, there must be some tribunal to determine on that good behaviour; and what body it can be, except the congress, would be difficult to decide. Besides good behaviour in a member of council is not determinable, like that of a judge, which has relation to the laws, and things universally known. In the office of the former, there is so much left to discretion, that I cannot perceive with what propriety he can hold it on the condition of good behaviour. There can be no sure criterion, and the decision must therefore unavoidably depend on the discretion, or mere opinion, of his judges, founded on no established principles whatever.—

A council, chosen by the president himself, would probably consist of creatures devoted to his will. I can discern no reason, wherefore any other officers of the government should make the appointment. There remains then only the people's choosing electors, and placing the council of the president on the same footing with himself. Here occurs the objection of expence; and here again would arise the controversy respecting equality of representation.—

The senate will, in all human likelihood, consist of the most important characters, men of enlightened minds, mature in judgment, independent in their circumstances, and not deriving their principal subsistence from their pay, as probably would the members of a board, distinct and separate from all other public employments.—

I am not, therefore, barely reconciled to the article in question. It commands my warmest admiration, and entire applause.—

Is there any power improperly trusted to that select assembly, in which all the states have equal interest, and to which they will assuredly make a determined point of sending their best men? It is this equality, almost as much as any other circumstance, which recommends it as an executive council. The senate are to try impeachments. By their advice only, may the president make treaties, appoint ambassadors, ministers, consuls, judges of the supreme court, and officers, not otherwise provided for in the constitution. Let us reflect, whether these things could be better done, by any other body, and whether it be proper for any one man (suppose even the saviour of his country to be immortal) to have the appointment of all those important officers. It has always appeared to me, that neither one man, nor many men, should possess this transcendent authority, in a republic. A single man in high power, if he always mean right, can with difficulty discern the true characters of men. Continual efforts are made to impose on his judgment. But, indeed, a single man *generally* confers offices by favour. In a large assembly there is perhaps equal partiality; and elections are conducted by intrigue and cabal. A select assembly is not so open to direct application; and although each may be supposed to entertain his partialities, he cannot recommend his favourites, without pointing out their essential qualifications, and becoming, in some measure, responsible for their conduct. It is here, that characters are most fairly

investigated, and appointments most deliberately made. I appeal to universal experience, whether these remarks be not strictly founded on fact, and whether the most judicious appointments have not been made by small select assemblies. I confess, that the number of the senators for this purpose only is excessive. But I can confidently rely on the extraordinary selection to compensate for the excess.

* * * * *

The power of the president is alarming peculiarly to that class, who cannot bear to view others in possession of that fancied blessing, to which, alas! they must themselves aspire in vain. They tell you, this supreme magistrate, although he be called by the modest name of president, and elected for only four years, will, in every essential, be an emperor, king, or stadtholder at least; and that his dignity, in a few years, will become hereditary. Let us examine the foundation of this alarming prediction.—

Before this appointment can be *entailed*, and before even the term can be enlarged, the constitution must be changed, by consent of the people. By what method, then, shall the president effect this alteration? Every citizen in the union will be a censor on his conduct. Not even his person is particularly protected; and the means of oppression are little in his power. Let the jealousy of the people once take the alarm, and, at the expiration of his term, he is dismissed, as inevitably as light succeeds to darkness. The election of a president is not carried on in a single assembly, where the several arts of corruption may be essayed. He is elected by persons chosen by the people; and those electors give their suffrages on the same day, in thirteen different assemblies, in thirteen different states. An elective monarchy has long been severely reprobated. But had the countries, where it prevailed, enjoyed regulations like these, they would perhaps, at this time, be preferred to the rules of hereditary succession, which have so often placed fools and tyrants on the throne.

It seems, however, that the president may possibly be continued for life. He may so, provided he deserve it. If not, he retires to obscurity, without even the consolation of having produced any of the convulsions, attendant usually on grand revolutions. Should he be wicked or frantic enough to make the attempt, he atones for it, with the certain loss of wealth, liberty or life.—

I return to the powers of congress. They are almost universally admitted to be proper for a federal head, except only the *sweeping clause*, and the power of raising fleets and armies, without any stint or limitation, in time of peace. The clause runs thus:

Art. 1, sect. 8, par. the last. “To make all laws, which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department or officer thereof.”

It is apprehended, that this *sweeping clause* will afford pretext, for freeing congress from all constitutional restraints.

I will not here again insist on the pledge we enjoy, in the common interest, and sure attachment of the representatives and senate; setting aside the little probability of a majority in each branch lying under the same temptation. Consider the import of the words.

I take the construction of these words to be precisely the same, as if the clause had

proceeded further and said, "No act of congress shall be valid, unless it have relation to the foregoing powers, and be necessary and proper for carrying them into execution." But say the objectors, "The congress, being itself to judge of the necessity and propriety, may pass any act, which it may deem *expedient*, for any other purpose." This objection applies with equal force to each particular power, defined by the constitution; and, if there were a bill of rights, congress might be said to be the judge of that also. They may reflect however, that every judge in the union, whether of federal or state appointment, (and some persons would say every jury) will have a right to reject any act, handed to him as a law, which he may conceive repugnant to the constitution.

It may nevertheless strike you at first view, that a provision, so obviously apt to excite distrust, might have well been omitted. So indeed it might, were there a possibility of providing every thing, necessary and proper, for carrying into effect the various powers, intended to be conferred. Without this general clause, it were easy to suppose cases, wherein a particular clause might be incompetent to its own purpose.—

For want of some plain and obvious distinctions, there has been vented so much senseless clamour against standing armies, that they are become a political bugbear. A limited monarch, with the means of maintaining, at all times, an army devoted to his will, might soon trample on the natural and civil rights of his subjects. Could the present congress find means of augmenting the force, which it now maintains, which of you, on that account, would experience the slightest anxiety? Which of all the European powers is destitute of an army? Which of them, if they were free, could be secure of remaining so, without a standing force? I might go further, and demand, whether any of them have lost their liberties, by means of a *standing* army?(m) The troops, continually kept up in Great-Britain, are formidable to its neighbours, and yet no rational Englishman apprehends the destruction of his rights. It is true, that he knows, these troops cannot be maintained, without the consent of his representatives, annually obtained. But the necessity of an army he readily conceives; and the number he leaves to the discretion of parliament. Ought then an American to have greater fears of a president, than an Englishman has of his king? Or may he not trust his representatives and the senate, with as much confidence, as the Englishman reposes in the commons and lords?

Let the federal head be constituted as it may, there can be no perfect security, without both a land force, and naval armament. It is impossible to say how much will, at all times of peace, be sufficient. We have the same security against the abuse of this, as of any other authority. The expences of an army might indeed raise fears of a different kind,—that we shall not be able to maintain force enough for the most proper occasion.

Suppose a limitation in time of peace. What then is to be done on the prospect of a war? Should you make the distinction between profound peace, and a *threatened* war, who is there, but congress, to determine on the exigency? If you make no distinction, then will it be expedient to declare war, at the instant in which the danger shall be conceived, in order that it may be lawful to prepare for only a just defence. In fine, I consider this grand objection, as a mere pretext for terrifying you, like children, with spectres and hobgoblins. It may be material here to remark, that although a well regulated militia has ever been considered as the true defence of a free republic, there are always honest purposes, which are not to be answered by a militia. If they were, the

burthen on the militia would be so great, that a free people would, by no means, be willing to sustain it. If indeed it be possible in the nature of things, that congress shall, at any future period, alarm us by an improper augmentation of troops, could we not, in that case, depend on the militia, which is ourselves. In such a case it would be ridiculous to urge, that the federal government is invested with a power over the whole militia of the union. Even when congress shall exercise this power, on the most proper occasions, it is provided in the constitution, that each state shall officer, and train its own militia.—

The objections against the judiciary are probably more sincere. The article has been generally misconceived, or misrepresented; and after bestowing much attention, I am not certain, that I fully comprehend it. I am, however, at length satisfied, that no rational construction can be given to this part of the proposed plan, either to warrant a rejection of the whole, or to place matters on a worse footing, than they are at present.

The judiciary power is to be vested in one supreme court, fixed at the seat of government; and, for the advantage of government, with the ease and convenience of the people, the congress may hereafter appoint inferior courts in each of the states. The jurisdiction of this supreme court is to be partly original, and partly appellate. With respect to the extent of either, there can be no possible doubt, as there is neither ambiguity nor uncertainty in the relative expressions.

The original jurisdiction of the supreme court extends

1. To all cases, in which may be concerned an ambassador, any other public minister, or a consul.
2. To all cases whatever, in which a state may be a party.—This second division may be branched into 1. Cases between the United States, and one or more of the individual states. 2. Cases between two or more states. 3. Cases between a state, and its own citizens.(n) 4. Cases between a state, and the citizens of another state. 5. Cases between a state, and a foreign state. 6. Cases between a state, and the citizens, or subjects, of a foreign state.

The appellate jurisdiction of the supreme court extends

1. To all cases whatever between parties of every kind, in law and equity, arising under this constitution, and the laws of congress, passed agreeably thereto, and to treaties already, or hereafter to be, made.
2. To all cases of admiralty or maritime jurisdiction.
3. To all cases, in which the United States shall be a party.
4. To all cases between citizens of different states.
5. To all cases between citizens of the same state, claiming lands under the grants of different states.
6. To all cases between citizens of a state, and foreign states, or their citizens or subjects.

One doubt arising on the judiciary article is, whether in these cases of appellate jurisdiction, the appeal lies both from the state courts, and the inferior federal courts, or only from the former, or only from the latter.

Another doubt is, whether the inferior federal courts are to be branches of the supreme court, constituted for convenience, and having equal jurisdiction, both original and appellate, with the supreme court; or whether the inferior courts are to be confined

to an *original* jurisdiction in those cases, wherein the supreme court has *appellate* jurisdiction.

I shall not presume to decide absolutely on the genuine construction of an article, which is said to have caused much private debate and perplexity. I am however fully persuaded, that, as the article speaks of an original and appellate jurisdiction, of a supreme court, and inferior courts; and, as there is no intimation of appeals from the several state tribunals, the inferior federal courts are intended to have original jurisdiction in all cases, wherein the supreme court has appellate jurisdiction; and the appeal lies only from them. I can, almost, with confidence, maintain, that, as there is no express clause, or necessary implication, to oust the jurisdiction of state courts, an action, after the adoption of the plan, may be instituted in any court, having, at this time, a jurisdiction. And if an action be brought in a state court, I do not, at present, perceive, that it can, in any manner, be transferred to the supreme or inferior federal court.

According then to the best of my judgment the affair stands thus. The supreme federal court will have an exclusive original jurisdiction in all cases relative to the rights of ambassadors, other ministers, and consuls; because, as I humbly conceive, the several state governments have at this time nothing to do with these cases. With respect to the cases, in which a state may be party, the supreme federal court, and the several state courts, will have, I conceive, concurrent original jurisdiction, *provided a state may, at this time, institute an action in its own name, in the courts of another state*. The inferior federal courts, and the state courts, will, I conceive, have concurrent original jurisdiction in all the enumerated cases, wherein an appeal lies to the supreme court, *except only the cases created by or under the proposed constitution, in which, as they do not now exist, the inferior federal courts will have exclusive jurisdiction*. From the state inferior courts, I further apprehend, that an appeal will lie, in all cases, to their own high courts of appeal, as heretofore.

A choice of jurisdictions has been ever esteemed a valuable right, even where there are both of the same kind. The purpose of extending so far the jurisdiction of the federal judiciary, is to give every assurance to the general government, of a faithful execution of its laws, and to give citizens, states, and foreigners, an assurance of the impartial administration of justice. Without this salutary institution, the federal government might frequently be obstructed, and its servants want protection. It is calculated not as an engine of oppression, but to secure the blessings of peace and good order. The provisions respecting different states, their citizens, and foreigners, if not absolutely necessary, are much to be applauded. The human mind is so framed, that the slightest circumstance may prevent the most upright and well known tribunal from giving complete satisfaction; and there may happen a variety of cases, where the distrust and suspicion may not be altogether destitute of a just foundation.—

On these principles, an appeal as to fact is no less proper, than the appeal from judges of law. A jury, whose legal qualifications are only property and ripe age, may more probably incur the imputation of weakness, partiality, or undue influence. But in regard to appeals, it is very material to remark, that congress is to make such regulations and exceptions, as upon mature deliberation, it shall think proper. And

indeed, before such regulations and exceptions shall be made, the manner of appeal will not be ascertained. Is it then to be presumed, that, in making regulations and exceptions, this appellate jurisdiction shall be calculated as an engine of oppression, or to serve only the purposes of vexation and delay.—

As the rod of Aaron once swallowed up the rods of the Egyptian *magi*,⁵ so also is it feared, that these federal courts will, at length, swallow up the state tribunals. A miracle, in one case, is as necessary, as in the other.

But let not the officers of state courts be overmuch alarmed! The causes, which, by possibility, may be(c) instituted in the federal courts bear no comparison to the rest. In the course of ten years, not one action, that I know of, in Maryland, has concerned either another state, or an ambassador, consul, or other minister. It is hoped, that actions by foreigners will, in a few years, become much rarer than at any time heretofore, and these may still be determined in the state courts.—

A gentleman, as it is conjectured, in the law department of a neighbouring state, has been pleased to infer, that fictions, similar to those in the king's bench and exchequer of England, will be contrived, to draw causes into the federal courts.⁶ He seems not aware, that, even in England, the established fictions of law are not of modern date. They were ingenious devices, to remedy defects in the common law, *without the aid of parliament*. The fundamental principle however, with respect to their adoption, was, that they *consist with equity, and be requisite for the advancement of justice*. Now every man, who would establish over his cause a jurisdiction in a federal court, must shew, that such cause comes under the description of the constitution. If he do not, there will be wanting that equity, which is the support of legal fiction. But can any man seriously imagine, that fiction will be permitted, to give the judges a power of legislation, denied to congress itself? Wherefore should the judges, holding their commissions during good behaviour, be guilty of such gross falshood, perjury, and breach of trust? Would there not be a general revolt against such barefaced impudent innovations? Away then with your trumpery of fictions! Accuse not the illustrious members of the convention of having in their contemplation such sophistry, pettifogging and chicane! But another fear is, that whatever actions may be instituted in the federal courts will there seek an admission, on account of a more speedy decision. That man alone, "on whose brow shame is ashamed to sit," will avow his opposition to a more speedy administration of justice.

The institution of the trial by jury has been sanctified by the experience of ages. It has been recognised by the constitution of every state in the union. It is deemed the birthright of Americans; and it is imagined, that liberty cannot subsist without it. The proposed plan expressly adopts it, for the decision of all criminal accusations, except impeachment; and is silent with respect to the determination of facts in civil causes.

The inference, hence drawn by many, is not warranted by the premises. By recognising the jury trial in criminal cases, the constitution effectually provides, that it shall prevail, so long as the constitution itself shall remain unimpaired and unchanged. But, from the great variety of civil cases, arising under this plan of government, it would be unwise and impolitic to say ought about it, in regard to these. Is there not a great variety of cases, in which this trial is taken away in each of the states? Are there not

many more cases, where it is denied in England? For the convention to ascertain in what cases it shall prevail, and in what others it may be expedient to prefer other modes, was impracticable. On this subject, a future congress is to decide; and I see no foundation under Heaven for the opinion, that congress will despise the known prejudices and inclination of their countrymen. A very ingenious writer of Philadelphia has mentioned the objections without deigning to refute that, which he conceives to have originated “in sheer malice.”—7

I proceed to attack the whole body of anti-federalists in their strong hold. The proposed constitution contains no *bill of rights*.

Consider again the nature and intent of a federal republic. It consists of an assemblage of distinct states, each completely organized for the protection of its own citizens, and the whole consolidated, by express compact, under one head, for their general welfare and common defence.

Should the compact authorise the sovereign, or head, to do all things it may think necessary and proper, then is there no limitation to its authority; and the liberty of each citizen in the union has no other security, than the sound policy, good faith, virtue, and perhaps proper interests, of the head.

When the compact confers the aforesaid general power, making nevertheless some special reservations and exceptions, then is the citizen protected further, so far as these reservations and exceptions shall extend.

But, when the compact ascertains and defines the power delegated to the federal head, then cannot this government, without manifest usurpation, exert any power not expressly, or by *necessary* implication, conferred by the compact.

This doctrine is so obvious and plain, that I am amazed any good man should deplore the omission of a bill of rights. When we were told, that the celebrated Mr. Wilson had advanced this doctrine in effect, it was said, Mr. Wilson would not dare to speak thus to a constitutionalist.⁸ With talents inferior to that gentleman’s, I will maintain the doctrine against any constitutionalist who will condescend to enter the lists, and behave like a gentleman.—

It is, however, the idea of another most respectable character, that, as a bill of rights could do no harm, and might quiet the minds of many good people, the convention would have done well to indulge them.—With all due deference, I apprehend, that a bill of rights might not be this innocent quieting instrument. Had the convention entered on the work, they must have comprehended within it every thing, which the citizens of the United States claim as a natural or a civil right. An omission of a single article would have caused more discontent, than is either felt, or pretended, on the present occasion. A multitude of articles might be the source of infinite controversy, by clashing with the powers intended to be given. To be full and certain, a bill of rights might have cost the convention more time, than was expended on their other work. The very appearance of it might raise more clamour than its omission,—I mean from those, who study pretexts for condemning the whole fabric of the constitution.—“What! (might they say) did these exalted spirits imagine, that the natural rights of mankind depend on their gracious concessions. If indeed they possessed that tyrannic sway, which the kings of England had once usurped, we might humbly thank them for their

magna charta, defective as it is. As that is not the case, we will not suffer it to be understood, that their *new-fangled* federal head shall domineer with the powers not excepted by their precious bill of rights. What! If the owner of 1000 acres of land thinks proper to sell one half, is it necessary for him to take a release from the vendee of the other half? Just as necessary is it for the people to have a grant of their natural rights from a government, which derives every thing it has, from the grant of the people.”—

The restraints laid on the state legislatures will tend to secure domestic tranquillity, more than all the bills, or declarations, of rights, which human policy could devise. It is very justly asserted, that the plan contains an avowal of many rights. It provides, that no man shall suffer by *ex post facto* laws, or bills of attainder. It declares, that gold and silver only shall be a tender for specie debts; and that no law shall impair the obligation of a contract.

I have here perhaps touched a string, which secretly draws together many of the foes to the plan. Too long have we sustained evils, resulting from injudicious emissions of paper, and from the operation of tender laws. To bills of credit, as they are now falsely called, may we impute the entire loss of confidence between men. Hence is it, that specie has, in a great degree, ceased its proper office, and been confined to speculations, baneful to the public, and enriching a few enterprising sharp-sighted men, at the expence not only of the ignorant, slothful, and needy, but of their country’s best benefactors. Hence chiefly are the bankruptcies throughout America, and the disreputable ruinous state of our commerce. Hence is it principally, that America hath lost its credit abroad, and American faith become a proverb. The convention plainly saw, that nothing short of a renunciation of the right to emit bills of credit could produce that grand consummation of policy, the restoration of public and private faith.

Were it possible for the nations abroad to suppose Great-Britain would emit bills on the terms whereon they have issued in America, how soon would the wide arch of that mighty empire tumble into ruins? In no other country in the universe has prevailed the idea of supplying, by *promissory notes*, the want of coin, for commerce and taxes. In America, indeed, they have heretofore served many valuable purposes. It is this consideration, which has so powerfully attached to them many well meaning honest citizens; and they talk of gratitude to paper money, as if it were a sensible benefactor, entitled to the highest rank and distinction; and as if, to abandon it, would be a deadly sin. But when every thing demonstrates the season to be past; when the credit of America, in all places, depends on the security she shall give to contracts, it would be madness in the states to be tenacious of their right. So long as Europe shall believe we regard not justice, gratitude and honour, so long will America labour under the disadvantages of an individual, who attempts to make good his way through the world with a blasted reputation. To the man, who shall say, “it is of no consequence to consult national honour,” I only answer thus,—“If thy soul be so narrow and depraved, as to believe this, it were a needless attempt to cure thee of thy error.”

On this subject, there is no necessity for enlarging, to the people of my native state; their conduct on a recent occasion having acquired them great and deserved applause.⁹ Is it necessary to enlarge on the propriety of giving more efficient powers to a federal head? At this moment, congress is little more than a name, without power to

effect a single thing, which is the object of a confederate republic. Reflect on the recent period, when, in a sister state, a numerous body of her frantic citizens appeared armed for the destruction of a government, framed by the people.¹⁰ When that unhappy state was devoted to the miseries of a civil war, did congress even dare to interpose? Conscious of its inability to protect, it could only await the result, in silence and in terror. It indeed ventured to *make application* to the states for a small body of troops, under the poor pretext of another, and a necessary, destination.¹¹ But, notwithstanding the universal contagion of the alarm, did the states, on *that* occasion, comply with the *requisition*? Suppose even an invasion by a foreign power,—in what manner could congress provide for its own defence? In the contemptible light, in which America has lately stood, is it reasonable to expect she will be suffered to remain long in peace? The distance between the two continents is the only circumstance, on which we can rely. All Europe is now in suspense; and the result of your deliberations will instruct her in the part she shall act.

With amazement, her nations contemplate a scene, of which the world is too young to furnish a parallel. We assembled our sages, patriots, and statesmen, to consult what mode of government is capable of producing the greatest sum of general good, with the least mixture of general, and partial evil. Not that each individual in this august assembly was expected to offer a system; but that the product of their joint wisdom should be referred to the several states, to be adopted, or rejected, as the great body of the people shall determine on a free and full deliberation.

As the occasion was unparalleled, so also is the plan, which, after many months of painful investigation, is submitted, with an unanimity, also unparalleled.

If there be any man, who approves the great outlines of the plan, and, at the same time, would reject it, because he views some of the minute parts as imperfect, he should reflect, that, if the states shall think as he does, an alteration may be hereafter effected, at leisure. When the convention determined, that the whole should be received, or the whole fail, they did it not on an arrogant conceit of their own infallibility, but on the soundest principles of policy and common sense.

Were each state legislature, or convention, to take it up, article by article, and section by section, with the liberty of adopting some, and rejecting the rest, in all probability, so small a part would be approved by nine states, on the narrow view which each has of the subject, and attached as each is to its own supposed interest, that, in its mutilated condition, it would be worse than the present confederation. For thirteen different assemblies, in that way, to approve so much of any plan whatever, as might merit the name of system, the convention well knew to be impossible. Were there any one body of men, invested with full power, in behalf of the whole United States, to consider, and amend the plan, then would it be proper to debate it by sections, in the same manner as it was originally debated.

With a view to defeat totally the plan, another general convention is proposed; not with the power of giving a finishing hand to a constitution; but *again* to consider objections, to strike out, to add, and *again* to make their report to the several states.

In this way, there can never be an end. We must at last return to this,—that whatever is agreed on, by the assembly appointed to propose, must be either adopted

in the whole, or in the whole rejected.

The idea of a new convention is started by some men, with the vain expectation of having amendments made to suit a particular state, or to advance their own selfish views. Were this fatal idea adopted, I should bid a last adieu to that elevated hope, which now inspires me, of living under the happiest form of government which the sun ever beheld. Recollect again and again, that almost every state in the union made a determined point of delegating its first characters to this grand convention. Reflect upon the time spent in the arduous work, and the sacrifices which those distinguished persons made to their country. Should the same men be deputed again, would they not, think you, with the same unanimity, subscribe and recommend the same plan? So far as I have been informed, those members, who, in the progression of the plan, had opposed certain parts, and yet afterwards subscribed cheerfully to the whole, have, with the candour which becomes them, acknowledged their errors in debate. Even an illustrious character, who was of the minority, consisting only of three, I have been told, has since regretted his refusal.¹²

Suppose then a second convention, with a different choice of delegates. These too would either speedily subscribe, or they might propose some other system, to be debated, paragraph by paragraph, in thirteen different assemblies; and then there would be the same probability of a mutilated plan; or they would propose something, to be adopted or rejected in the whole; and there would be the same necessity of another convention. Besides, as the second convention, if it consist of different men, must *inevitably* be inferior to the first, there is little probability that their work will be superior. Never again, in an assembly constituted as that was, will there be found the same liberality of sentiment, “the same spirit of amity, and the same mutual deference and concession.”¹³

If it be contended, that the second, being possessed of the various objections from the several states, must be better able to determine, I would ask, what conduct this second convention should adopt? Are they to take the proposed plan, and strike out every thing objected to by nine states, or by seven states, or by any one of the states? Or may they like wise adopt and recommend the entire plan? In short, to appoint a second convention, merely to consult and propose, would be the most absurd expedient, that ever, in a matter of this amazing magnitude, was proposed. Does any man then entertain the thought of another kind of convention, invested with full powers to consult, amend, adopt, and confirm? A scheme like this was never yet, I trust, in agitation. But, if it were, I would propose this single question. Whether it is better to amend, before it be tried, that plan, which may be termed the result of the wisdom of America, or leave it to be amended, at leisure, as mature experience shall direct?

Although a very great variety of sensible objections have been publicly offered, the real and sincere objections are hardly ever disclosed in private. There is a class, opposed to the union of *thirteen different states*, and the reason they assign, is the vast extent of our territory. Let us consider well their objection.

To consolidate the whole thirteen states into a single organization, was out of the convention’s contemplation,—for two unanswerable reasons. In the first place, they were satisfied, that not one of the states would renounce its sovereignty. In the next

place, they considered, that, in a single government, with a great extent of territory, the advantages are most unequally diffused. As the extreme parts are scarcely sensible of its protection, so are they scarcely under its domination. It is generally agreed, that a great extended nation can long continue under no *single* form of government, except a despotism, into which, either a republic, or a limited monarchy, will be certain to degenerate. And hence, if I understand the man who styles himself a *Centinel*, he insinuates, that, if these states will persist in remaining under one head, they must soon fall under the dominion of a despot.¹⁴ But, my fellow-citizens, in a confederate republic, consisting of distinct states, completely organized within themselves, and each of no greater extent than is proper for a republican form, almost all the blessings of government are equally diffused. Its protection extends to the remotest corner, and there every man is under restraint of laws.

A true federal republic is always capable of accession by the peaceable and friendly admission of new single states. *Its true size is neither greater nor less than that, which may comprehend all the states, which, by their contiguity, may become enemies, unless united under one common head, capable of reconciling all their differences.* Such a government as this, excels any single government, extending over the same territory, as a band of brothers is superior to a band of slaves, or as thirteen common men, for the purposes of agriculture, would be superior to a giant, enjoying strength of body equal to them all.

The idea of a balance has long influenced the politics of Europe. But how much superior to this almost impracticable balance would be a general league, constituting a kind of federal republic, consisting of all the independent powers in Europe, for preventing the impositions and encroachments of one upon another! A true and perfect confederate government, however, in her situation, is not to be attained; although the great soul of Henry the fourth is said to have conceived the idea.

Shall America then form one grand federal republic? Or shall she, after experiencing the benefits of even an imperfect union, and when a union the most perfect is requisite for her permanent safety;—shall she, in this situation, divide into thirteen contemptible single governments, exposed to every insult and wrong from abroad, and watching each other's motions, with all the captiousness of jealous rivals? Or shall she divide into two or more federal republics, actuated by the same malignant dispositions? In either of these cases, after struggling through infinite toils, difficulty, and danger, should the thirteen single states be, at last, delivered from foreign foes, they will fall upon each other; and no man can predict, what forms of government, or division of territory, shall finally obtain—. Two or three federal republics might possibly retain their independence. But they would be in the same situation, with respect to each other, as France, England, and Spain, scarcely ever free from war; practising the arts of dissimulation and intrigue; in vain striving to impose, by endless negotiation; and, after all, relying only on the immense naval and land forces, which they continually maintain.

Let us, then, my countrymen, embrace those blessings, which Providence is ready to shower on us. Open and extend your views! Let the prospect comprehend the present and future generations, yourselves, your children, your relatives, your fellow-

citizens, dwellers on the same continent, and inhabitants of the whole terraqueous globe.—

With the prospect of my country's future glory, presented to my glowing imagination, it is difficult to resist the strong impulse of enthusiasm. But it is neither *my* talent, nor desire, to mislead. I wish only to impress the genuine advantages of the proposed plan; and, if possible, to rouse every man from that supineness, into which he is lulled by the present deceitful calm. To acquit themselves, like men, when visible danger assails; and, when it is repelled, to sink like savages, into indolence, is said to be the characteristic of Americans. I am not, however, one of those, who imagine a necessity for embracing almost any scheme, which the convention might have devised, for giving to the union more efficient powers. Had the plan, they have proposed, contained the seeds of much, though distant, evil, perhaps a *faithful patriot* might address you thus:

“Let us not, my friends, in a fit of unmanly apprehension, betray that immense charge, with which Americans, at this day, are entrusted! Let us confide in *the wisdom of our great men*, with the assistance of Heaven, to establish yet our safety and happiness! Let us, in the mean time, sustain all our evils, with resignation and firmness! Let us hope, that no foreign power, or lawless internal combinations, shall do us a mighty injury! Let us be frugal, economical, industrious! Let us suspend the cruel collection of debts! Let commerce continue to droop! Let us awhile submit even to infamy; and turn a callous ear to the indignant reproaches of our late faithful and affectionate servants, friends and benefactors.”

To this purpose might a man plausibly declaim; provided the proposed plan contained many and great faults; provided it were not calculated to promote the general good, without violating the *just rights* of a single individual; and provided it were not the best, which, under all circumstances, could be reasonably expected. It was the parting declaration of the American Nestor, to his exalted fellow-labourers, that “he would subscribe, because he thought it good, and because he did not know, but it was the best that could be contrived.”¹⁵ My own declaration, which would be the same, were I now standing on the verge of eternity, is, that if the whole matter were left to my discretion, I would not change a single part.(o) On reflection, I was pleased with the conduct of the Virginia and Maryland assemblies, in appointing distant days for the meeting of their state conventions. Not that I greatly admired the supposed motive; but because I sincerely wished every man might have time to comprehend and weigh the plan, before the ultimate decision of these two states should be pronounced. The longer it is contemplated, after it is understood, the greater, I am persuaded, will be the approbation of those, who wish the public good, and to whose private views and expectations, nothing, which tends to promote that good, can be greatly detrimental.—

But alas! My fellow-citizens, on the adoption of this fatal plan, and when every part of the great complicated machine shall be put in motion, the lustre of our state assemblies will be diminished by the superior splendour of the federal head. This single consideration, although many hesitate to avow it, will cause more opposition, than all the rest united. Weigh well the objection. If ever it be material to inquire, by whom reasons are adduced, it is on this peculiar occasion.

From the objection itself, may perhaps be discerned the danger we are exposed to, from the secret views and selfish considerations of the objector.

What at this moment to the nations abroad is the state of Maryland? The poor member of a defenceless system of petty republics—. In what light is she viewed by her sister states?—Whatever rank she now possesses, will remain after the great alteration of the system. They will all rise or fall in the proportion which now exists—. What then are the powers an individual state will lose?—She will no longer be able to deny congress that, which congress, at this moment, has a right to demand. She will have no power to enter into a treaty, alliance, or confederation. She shall, in time of war, grant no letters of marque and reprisal. She shall coin no money, emit no bills of credit, nor make any thing but gold and silver a tender in payment of debts. She shall pass no bill of attainder, or ex post facto law, or law impairing the obligation of a contract. She shall grant no title of nobility. She shall not, *without consent of congress*, lay any duty on imports or exports, except what may be necessary for executing her inspection laws. She shall not, *without consent of congress*, lay any duty on tonnage, keep troops or(d) ships of war, in time of peace; enter into any agreement, or compact, with another state, or with a foreign power; or engage in war, unless actually invaded, or in such imminent danger, as will not admit of delay.

Of the several powers, from which an individual state is thus restrained, some are improper to be used at all; others belong not even now to the individual states; and the rest are strictly proper for only the federal head. The aversion from ceding them to congress, is just as reasonable as in a state of nature would be the reluctance of an individual to relinquish any of his natural rights, upon entering into a state of society. The principle, on which, at length, he surrenders, is the necessity of every one's making a cession of some rights, to enable the sovereign to protect the rest. Each state is fully sensible, that she cannot protect herself; and yet she would enjoy the advantages of an union, without making the necessary contributions. To discern how preposterous is the idea, requires not more than a moment's reflection.

For the honour of my countrymen, I hope this extreme reluctance to surrender power is confined to those, whose ambition, or private interest, would have all things subservient to the omnipotence of assembly. In the few years that the state constitutions have endured, has not every one seen pregnant proofs of the vain love of domination? Has he not also seen decisive marks of overbearing secret influence? Where are the instances of exalted patriotism?—But I forbear. Far from me is the wish to cast wantonly one stinging or disagreeable reflection. The subject naturally required the general remark, and I hope, this short hint may be excused.—

Is there a possible advantage to be derived to the public, from a single state's exercising powers proper only for the federal head; suppose even each state should use them properly and alike; which, in the nature of things, is not to be expected? If there be men, who delight in parliamentary warfare; who choose a fair wide field for displaying their talents; who wish to see every servant of the public prostrate before them; whose ears are soothed by humble supplication; they may still enjoy rich sources of gratification. Are not the regulations of property, the regulations of the penal law, the protection of the weak, the promotion of useful arts, the whole internal government of

their respective republics; are not these the main objects of every wise and honest legislature? Are not these things still in their power; and, whilst free from invasion or injuries abroad, are not these almost the only things, in which sovereignty is exercised?

That the state legislatures will soon “drop out of sight,” is an idea most extravagant and absurd; because, in addition to the importance of their duties, the very existence of the congress depends upon them. That they will, at least, dwindle into something like city corporations, is an apprehension, founded on no better principle. May the Ruler of the universe inspire them with wisdom to discharge those numerous and extensive duties, which they will find remaining. To do this, as they ought, will be far preferable to the(e) breaking all useful national measures, and marring the concerns of a continent. To do this, as they ought, will afford more true pleasure to a good mind, than the carrying, by consummate eloquence and address, the most interesting federal measure, which can now be contrived by an enlightened honest politician, in a state assembly, possessing all its darling sovereignties!

You have been assured, that, soon as this fatal plan shall succeed, an host of rapacious collectors will *invade* the land; that they will wrest from you the hard product of your industry, turn out your children from their dwellings, perhaps commit your bodies to a jail; and your own immediate representatives will have no power to relieve you.—This is the mere phrenzy of declamation, the ridiculous conjuration of spectres and hobgoblins!

To the five per cent, impost most of the states have more than once given their assent.¹⁶ This is the only tax which congress wishes immediately to impose. Of the imposition of assessment, capitation, or direct taxes of any kind, the congress entertains no idea at present; and although it be proper for the federal head to possess this power in reserve, nothing but some unforeseen disaster will ever drive them to such ineligible expedients. Setting aside the immediate advantages of revived credit and trade, and the increased value of your property and labour, you will be delivered, in a great measure, from that load of direct taxation, which has been so unequally borne, and produced so little substantial good.

Permit me to demand, what mighty benefit has resulted from the exercise of those sovereign rights, that, in general, you should be loth to resign them? Has not a perpetual clamour been kept up (it matters not whether justly or otherwise) concerning the enormous impositions on the people? And what are the advantages derived to the people of the respective states, to the union, or to meritorious individuals? Has not the far greater part of a state’s internal expences been owing to the extreme length of sessions? Have not these sessions been consumed in disgusting altercation, and in passing laws, serving to little better purpose, than to swell the statute book, encourage a negligence of duty, and obstruct the administration of justice?

To trace each real and ostensible objection up to its proper source, would be a task equally invidious, irksome and unnecessary. The characters of the principal advocates and opponents are well known. To him who declines not a public avowal of his sentiments, some credit is due, for his candour; and he is entitled to your patient attention. But, he that prefers a secret corner, for dealing forth his objections, and expositions, should be heard with caution and distrust. It is in a land of slavery alone,

where truth shuns the open day— Each side has imputed to the other illiberal and selfish motives. Consider then the particular interests of each; and bear this in your minds, that an interest may be either honourable and praiseworthy, or directly the reverse.

You have been told, that the proposed plan was calculated peculiarly for the rich. In all governments, not merely despotic, the wealthy must, in most things, find an advantage, from the possession of that, which is too much the end and aim of all mankind. In the proposed plan, there is nothing like a discrimination in their favour. How this amazing objection is to be supported, I am at a loss to conjecture. Is it a just cause of reproach, that the constitution effectually secures property? Or would the objectors introduce a general scramble? In eligibility to office, in suffrage, and in every other civil right, all men are on terms of perfect equality. And yet, notwithstanding this just equality, each man is to pay taxes in proportion to his ability, or his expences.—

A still more surprising objection remains to be considered. “This new constitution, so much bepraised and admired, will commence in a moderate aristocracy.¹⁷ To a corrupt and oppressive one the transition is easy, and inevitable, unless some Cæsar, or a Cromwell, in their stead, shall make a seizure of your liberties. As to the house of representatives, they will either be insignificant spectators of the contest between the president and the senate, or their weight will be thrown into one of the scales.”

No man, indeed, has exactly used these words; but they contain the sum and scope of several recent publications.

In the course of my remarks, I have already said enough to expose the futility of certain objections, which are ushered to the world, under the auspices of a pair of honourable names. Notwithstanding the care and pomposity, with which they are circulated, it is not worth while to draw an invidious comparison. One gentleman, whose name is thus *freely* used, I think, calls the house of representatives a mere shred, or rag of representation.¹⁸ Does he consider the distinction between the objects of a confederate republic, and of a single government? It is a poor return for that singular respect, which the convention paid to the majesty of the people, in contriving, that congress shall not only be a representation of states, as heretofore, but also an immediate representation of the people. Were 5, 10, or even 20,000, the ratio proposed, then peradventure the honourable objector might clamour about the expence of a mobbish legislature. The fact is, that the new government, constructed on the broad basis of equality, mutual benefits, and national good, is not calculated to secure a single state all her natural advantages, at the expence of the natural and acquired advantages of her respectable brethren of New-England.—

His real objection against constituting the senate an executive council arises, I conceive, from the equality of representation. As to the trite maxim, that the legislative and executive ought ever to be distinct and separate, I would, in addition to my foregoing observations on this head, refer him to Montesquieu’s chapter on the English government.¹⁹ I could wish, the writings of that great man, and of judge Blackstone, so often either copied, or cited for conclusive authority, were better understood. Should a second, or a third convention, be obtained, the aforesaid honourable gentlemen can never be *fully* indulged in their main object of a proportionate representation.

The examples of a genuine aristocracy are rare. They were founded in times of

profound ignorance, and when the mass of property was in the hands of a few, whilst the rest pined in want and wretchedness.(p) One European aristocratic government, if such it can be called, has grown out of an original defective form, the offspring of necessity, and commenced amidst the horrors of a civil war. Although the people of that country fought, and intended, to be free, their compact of government never was complete; they did not attend to the principle of rotation, and checks; and a genuine representation did never there prevail.—

An aristocracy can perhaps subsist only with a moderate extent of territory and population.—But it is a farce to talk of an aristocracy; when there are two branches, so differently formed; when the members of each are chosen for a reasonable term; and when their reappointment depends on the good opinion of their countrymen. It is not in nature, that a man with the least portion of *common* sense can believe, the people of America will consent to such a deplorable change in their constitution, as shall confine all power to a few noble families, or that, without their consent, the change will be effected, by internal policy, or force.

Whilst mankind shall believe freedom to be better than slavery; whilst our lands shall be generally distributed, and not held by a few insolent barons, on the debasing terms of vassallage; whilst we shall teach our children to read and write; whilst the liberty of the press, that grand palladium, which tyrants are compelled to respect, shall remain; whilst a spark of public love shall animate even a small part of the people; whilst even self-love shall be the general ruling principle; so long will it be impossible for an aristocracy to arise from the proposed plan.—Should Heaven, in its wrath, inflict blindness on the people of America; should they reject this fair offer of permanent safety and happiness;—to predict, what species of government shall at last spring from disorder, is beyond the short reach of political foresight.

Believe me, my fellow-citizens, that no overweening self-conceit, no vain ambition, no restless meddling spirit, has produced this address. Long had I waited to see this vast question treated, as it deserves; and the publication disseminated in my native state. Many judicious observations had appeared in news-papers and hand-bills. But no publication, that I have seen, has gone fully into the merits, considered the objections, and explained that, which is doubtful and obscure. On this account I, at length, made the attempt. That my performance is equal to my wishes, I can by no means believe. I have, however, a consolation in reflecting, that it will be difficult for any man to demonstrate, that, in this business, I have a particular interest.—In many of my remarks, I have been anticipated by writings, which I have seen; and I have collected materials, wherever I could find them. Could I be convinced, that I have said nothing, which had not before been said or thought by thousands, the reflection would yield far less mortification than pleasure.

Annapolis,
January 1, 1788.

FINIS.

(a)Against what is called equality in representation, the great Montesquieu seems to have declared by the strongest implication. In his Spirit of Laws, b. 9, ch. 2,20 he says,

that the confederate republic of Lycia contained twenty-three associated towns: that, in the common council, the larger towns had three votes, the middling towns two, and the lesser only one; that they contributed to the common expence according to the proportion of suffrages; and, that were he to give *the model of an excellent confederate republic*, it should be that of Lycia. Could the immortal spirit of Montesquieu revisit the earth, and behold the model now offered to America, how quickly would his favourite republic sink in his estimation. In a new quarter of the globe scarcely heard of by the greater part of Europeans in his day, and since the commencement of the present century, he would see men who have attained a perfection in the science most conducive to human happiness, in that study which was the principal occupation of his life, in which his predecessors had acquired only a few glimmering lights, and of which it was reserved for him to develop most of the true first principles.

(b) Whether the state of Maryland shall be divided into six districts, for each to choose one man, or the people at large give their suffrage for the whole six, is hereafter to be settled by the assembly.²¹ The latter mode, on a variety of occasions, would be preferable.(q)

(c) The importance of having the western territory determined a common stock, needs only to be mentioned, to excite attention.—

As the articles of confederation contain no provision, for adjusting the dispute between the United, and particular, states, Maryland, for a long time, refused her ratification. An adequate provision is made by the proposed plan. That the United States will assuredly institute actions against two of the states, setting up claims equally wild and extensive, may appear from the following statement.

New-Hampshire, Rhode-Island, New-Jersey, Delaware and Maryland, have been always interested in making good the common claim; as they never laid any particular claim to the territory in question.—

Massachusetts, if the province of Main be separate, is likewise become interested in the common claim.

Connecticut, and New-York, have both made cessions, which congress has accepted.

These two are therefore become interested.

Pennsylvania, although very extensive, has her limits ascertained. She likewise is interested.—

Virginia, having made a cession to congress, has since relinquished a part of the reserved lands, or at least offered independence, to Kentucky.—

North-Carolina, having once made a cession, thought proper, in the omnipotence of her distinct sovereignty, to repeal the act. Will not the cession be determined valid, and the repeal void?

South-Carolina also, *it is said*, has ceded part of that territory, which lately she disputed with Georgia. In this case the United States have their claim fortified.—

But Georgia, the weakest of all, lays claim to an immense tract of country. In this territory there are warlike and independent tribes of the *aborigines*, now carrying terror and desolation towards the heart of the country occupied by the whites. It is expected, that this circumstance, with a consciousness of the weak foundation of her claims, will dispose Georgia to give up without a suit, and consent to be circumscribed within

narrower limits, so soon as a proper tribunal shall have power to enter upon a rational investigation.—

N. B. For the above statement I am principally indebted to a member of the late continental convention, and who for a considerable time, was a member of congress, a gentleman of established honour and accuracy.

(d)The advantage derived from this to the southern states, is easily perceived. Have not serious apprehensions been entertained on account of the vast superiority of the eastern states by sea?

(e)Is it possible to reflect, without indignation, on the fate of the five per cent, impost scheme?

[Alexander Contee Hanson's Handwritten, Unpublished Annotations]

(f)Change "such" to "him."

(g)Insert "time."

(h)Insert "to which it equally applies."

(i)Change "it" to "it's members."

(j)Change "were" to "was."

(k)Change "them" to "their delegates."

(l)Two horizontal lines are drawn above this paragraph and below this line. A handwritten symbol is placed in the margin.

(m)Insert: "It cannot reasonably be supposed the meaning of Aristides, that an army has never been the engine to destroy liberty; but that the circumstance of an army's being continually maintained has not been fatal to the liberties of any nation in Europe, unless some other circumstance concurred. From what man, or body of men, is danger to the liberties of the United States to be apprehended, supposing even the standing forces of America to be greater than exigencies require? What could even a body of 10,000 men effect, where the territory is of such amazing extent, & where there are 13 single governments continually watching the head? What purpose could be answered by seizing a few posts before the alarm could be spread?—When indeed a whole state scarcely extends beyond the bounds of a single city, an enterprising man may, by a sudden stroke, with a few body guards, effect his purpose—But is it at all likely, that the president of America can do so, with any force, that is likely to be raised and maintained by the government, could that force even be collected together without exciting jealousy—"

(n)Cross out "3. Cases between a state, and its own citizens." Numbers 4, 5, and 6 in this paragraph were changed to 3, 4, and 5.

(o)Change this sentence to read: "My own declaration is, that if the whole matter were left to my discretion, I would not change a single part without a previous trial."

(p)Footnote: "United Netherlands or Holland—"

(q)Insert: "I do not mean that all the people should repair to the capital; but that each man should vote in his own county for six representatives—"

Cite as: *The Documentary History of the Ratification of the Constitution Digital Edition*, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and

Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009.

Canonic URL: <http://rotunda.upress.virginia.edu/founders/RNCN-03-15-02-0140-0002>
[accessed 24 May 2012]

Original source: Commentaries on the Constitution, Volume XV: Commentaries on the Constitution, No. 3