

William R. Davie, Speech in the Ratifying Convention, 29 July 1788

Mr. DAVIE. Mr. Chairman, yesterday and to-day I have given particular attention to the observations of the gentleman last up. I believe, however, that, before we take into consideration these important clauses, it will be necessary to consider in what manner laws can be executed. For my own part, I know but two ways in which the laws can be executed by any government. If there be any other, it is unknown to me. The first mode is coercion by military force, and the second is coercion through the judiciary. With respect to coercion by force, I shall suppose that it is so extremely repugnant to the principles of justice and the feelings of a free people, that no man will support it. It must, in the end, terminate in the destruction of the liberty of the people. I take it, therefore, that there is no rational way of enforcing the laws but by the instrumentality of the judiciary. From these premises we are left only to consider how far the jurisdiction of the judiciary ought to extend. It appears to me that the judiciary ought to be competent to the decision of any question arising out of the Constitution itself. On a review of the principles of all free governments, it seems to me also necessary that the judicial power should be coëxtensive with the legislative.

It is necessary in all governments, but particularly in a federal government, that its judiciary should be competent to the decision of all questions arising out of the constitution. If I understand the gentleman right, his objection was not to the defined jurisdiction, but to the general jurisdiction, which is expressed thus: "The judicial power 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;" and also the appellate jurisdiction in some instances. Every member who has read the Constitution with attention must observe that there are certain fundamental principles in it, both of a positive and negative nature, which, being intended for the general advantage of the community, ought not to be violated by any future legislation of the particular states. Every member will agree that the positive regulations ought to be carried into execution, and that the negative restrictions ought not to be disregarded or violated. Without a judiciary, the injunctions of the Constitution may be disobeyed, and the positive regulations neglected or contravened. There are certain prohibitory provisions in this Constitution, the wisdom and propriety of which must strike every reflecting mind, and certainly meet with the warmest approbation of every citizen of this state. It provides, "that no state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; that no preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; and that no state shall emit bills of credit, make any thing but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." These restrictions ought to supersede the laws of particular states. With respect to the prohibitory provision — that no duty or impost shall be laid by any particular state — which is so highly in favor of us and the other non-importing states, the importing states might make laws laying duties notwithstanding, and the Constitution might be violated with impunity, if there were no power in the general government to correct and counteract such laws. This great object can only be safely and completely obtained by the instrumentality of the federal judiciary. Would not Virginia, who has raised many thousand

pounds out of our citizens by her imposts, still avail herself of the same advantage if there were no constitutional power to counteract her regulations? If cases arising under the Constitution were left to her own courts, might she not still continue the same practices? But we are now to look for justice to the controlling power of the judiciary of the United States. If the Virginians were to continue to oppress us by laying duties, we can be relieved by a recurrence to the general judiciary. This restriction in the Constitution is a fundamental principle, which is not to be violated, but which would have been a dead letter, were there no judiciary constituted to enforce obedience to it. Paper money and private contracts were in the same condition. Without a general controlling judiciary, laws might be made in particular states to enable its citizens to defraud the citizens of other states, Is it probable, if a citizen of South Carolina owed a sum of money to a citizen of this state, that the latter would be certain of recovering the full value in their courts? That state might in future, as they have already done, make pine-barren acts to discharge their debts. They might say that our citizens should be paid in sterile, inarable lands, at an extravagant price. They might pass the most iniquitous instalment laws, procrastinating the payment of debts due from their citizens, for years — nay, for ages. Is it probable that we should get justice from their own judiciary, who might consider themselves obliged to obey the laws of their own state? Where, then, are we to look for justice? To the judiciary of the United States. Gentlemen must have observed the contracted and narrow-minded regulations of the individual states, and their predominant disposition to advance the interests of their own citizens to the prejudice of others. Will not these evils be continued if there be no restraint? The people of the United States have one common interest; they are all members of the same community, and ought to have justice administered to them equally in every part of the continent, in the same manner, with the same despatch, and on the same principles. It is therefore absolutely necessary that the judiciary of the Union should have jurisdiction in all cases arising in law and equity under the Constitution. Surely there should be somewhere a constitutional authority for carrying into execution constitutional provisions: otherwise, as I have already said, they would be a dead letter.

With respect to their having jurisdiction of all cases arising under the laws of the United States, although I have a very high respect for the gentleman, I heard his objection to it with surprise. I thought, if there were any political axiom under the sun, it must be, that the judicial power ought to be coëxtensive with the legislative. The federal government ought to possess the means of carrying the laws into execution. This position will not be disputed. A government would be a *felo de se* to put the execution of its laws under the control of any other body. If laws are not to be carried into execution by the interposition of the judiciary, how is it to be done?

I have already observed that the mind of every honest man, who has any feeling for the happiness of his country, must have the highest repugnance to the idea of military coercion. The only means, then, of enforcing obedience to the legislative authority must be through the medium of the officers of peace. Did the gentleman carry his objection to the extension of the judicial power to treaties? It is another principle, which I imagine will not be controverted, that the general judiciary ought to be competent to the decision of all questions which involve the general welfare or peace of the Union. It was necessary that treaties should operate as laws

upon individuals. They ought to be binding upon us the moment they are made. They involve in their nature not only our own rights, but those of foreigners. If the rights of foreigners were left to be decided ultimately by thirteen distinct judiciaries, there would necessarily be unjust and contradictory decisions. If our courts of justice did not decide in favor of foreign citizens and subjects when they ought, it might involve the whole Union in a war: there ought, therefore, to be a paramount tribunal, which should have ample power to carry them into effect. To the decision of all causes which might involve the peace of the Union may be referred, also, that of controversies between the citizens or subjects of foreign states and the citizens of the United States. It has been laid down by all writers that the denial of justice is one of the just causes of war. If these controversies were left to the decision of particular states, it would be in their power, at any time, to involve the continent in a war, usually the greatest of all national calamities. It is certainly clear that where the peace of the Union is affected, the general judiciary ought to decide. It has generally been given up, that all cases of admiralty and maritime jurisdiction should also be determined by them. It has been equally ceded, by the strongest opposers to this government, that the federal courts should have cognizance of controversies between two or more states, between a state and the citizens of another state, and between the citizens of the same state claiming lands under the grant of different states. Its jurisdiction in these cases is necessary to secure impartiality in decisions, and preserve tranquillity among the states. It is impossible that there should be impartiality when a party affected is to be judge.

The security of impartiality is the principal reason for giving up the ultimate decision of controversies between citizens of different states. It is essential to the interest of agriculture and commerce that the hands of the states should be bound from making paper money, instalment laws, or *pine-barren acts*. By such iniquitous laws the merchant or farmer may be defrauded of a considerable part of his just claims. But in the federal court, real money will be recovered with that speed which is necessary to accommodate the circumstances of individuals. The tedious delays of judicial proceedings, at present, in some states, are ruinous to creditors. In Virginia, many suits are twenty or thirty years spun out by legal ingenuity, and the defective construction of their judiciary. A citizen of Massachusetts or this country might be ruined before he could recover a debt in that state. It is necessary, therefore, in order to obtain justice, that we recur to the judiciary of the United States, where justice must be equally administered, and where a debt may be recovered from the citizen of one state as soon as from the citizen of another.

As to a bill of rights, which has been brought forward in a manner I cannot account for, it is unnecessary to say any thing. The learned gentleman has said that, by a concurrent jurisdiction, the laws of the United States must necessarily clash with the laws of the individual states, in consequence of which the laws of the states will be obstructed, and the state governments absorbed. This cannot be the case. There is not one instance of a power given to the United States, whereby the internal policy or administration of the states is affected. There is no instance that can be pointed out wherein the internal policy of the state can be affected by the judiciary of the United States. He mentioned impost laws. It has been given up, on all hands, that, if there was a necessity of a federal court, it was on this account. Money is difficult to be

got into the treasury. The power of the judiciary to enforce the federal laws is necessary to facilitate the collection of the public revenues. It is well known, in this state, with what reluctance and backwardness collectors pay up the public moneys. We have been making laws after laws to remedy this evil, and still find them ineffectual. Is it not, therefore, necessary to enable the general government to compel the delinquent receivers to be punctual? The honorable gentleman admits that the general government ought to legislate upon individuals, instead of states.

Its laws will otherwise be ineffectual, but particularly with respect to treaties. We have seen with what little ceremony the states violated the peace with Great Britain. Congress had no power to enforce its observance. The same cause will produce the same effect. We need not flatter ourselves that similar violations will always meet with equal impunity. I think he must be of opinion, upon reflection, that the jurisdiction of the federal judiciary could not have been constructed otherwise with safety or propriety. It is necessary that the Constitution should be carried into effect, that the laws should be executed, justice equally done to all the community, and treaties observed. These ends can only be accomplished by a general, paramount judiciary. These are my sentiments, and if the honorable gentleman will prove them erroneous, I shall readily adopt his opinions.

Jonathan Elliot, ed., *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution*, Vol. 4, Philadelphia: J.B. Lippincott and Company, pp. 155-160.