

Marcus V, *Norfolk and Portsmouth Journal*, 19 March 1788

Answers to Mr. Mason's Objections to the New Constitution, Recommended by the late Convention at Philadelphia.

(Concluded from our last.)

IXth. Objection.

“The State Legislatures are restrained from laying export duties on their own exports.”

Answer.

Duties upon exports, though they may answer in some particulars a convenience to the country which imposes them, are certainly not things to be contended for, as if the very being of a State was interested in preserving them. Where there is a kind of monopoly this may sometimes be ventured upon, but even there perhaps more is lost by imposing such duties than is compensated for by any advantage. Where there is not a species of monopoly no policy can be more absurd. The American States are so circumstanced, that some of the States necessarily export part of the produce of neighbouring ones. Every duty laid upon such exported produce, operates in fact as a tax by the exporting State upon the non-exporting State. In a system expressly formed to produce concord among all, it would have been very unwise to have left such a source of discord open; and upon the same principle, and to remove as much as possible every ground of discontent, Congress itself are prohibited from laying duties on exports, because by that means those States which have a great deal of produce to export, would be taxed much more heavily than those which have little or none for exportation.

Xth. Objection.

“The general Legislature is restrained from prohibiting the further importation of slaves for twenty odd years, though such importations render the United States weaker, more vulnerable, and less capable of defence.”

Answer.

If all the States had been willing to adopt this regulation, I should, as an individual, most heartily have approved of it, because, even if the importation of slaves in fact rendered us stronger, less vulnerable, and more capable of defence, I should rejoice in the prohibition of it, as putting a stop to a trade which has already continued too long for the honor and humanity of those concerned in it. But as it was well known that South-Carolina and Georgia thought a further continuance of such importations useful to them, and would not perhaps otherwise have agreed to the new Constitution, those States which had been importing till they were satisfied, could not with decency have insisted upon their relinquishing advantages [which they] themselves had already enjoyed. Our situation makes it necessary to bear the evil as it is. It will

be left to the future Legislatures to allow such importations or not. If any, in violation of their clear conviction of the injustice of this trade, persist in pursuing it, this is a matter between God and their own consciences. The interests of humanity will however have gained something by a prohibition of this inhuman trade, though at the distance of twenty odd years.

Xlth. Objection.

“Both the general Legislature, and the State Legislatures are expressly prohibited making *ex post facto* laws, though there never was, nor can be a Legislature but must and will make such laws when necessity and the public safety require them; which will hereafter be a breach of all the Constitutions in the union, and afford precedents for other innovations.”

Answer.

My ideas of liberty are so different from those of Mr. Mason, that in my opinion this very prohibition is one of the most valuable parts of the new Constitution. *Ex post facto* laws may some times be convenient, but that they are ever absolutely necessary I shall take the liberty to doubt, till that necessity can be made apparent. Sure I am, they have been the instrument of some of the grossest acts of tyranny that were ever exercised, and have this never failing consequence, to put the minority in the power of a passionate and unprincipled majority, as to the most sacred things; and the plea of necessity is never wanting where it can be of any avail. This very clause, I think, is worth ten thousand Declarations of Rights, if this the most essential right of all was omitted in them. A man may feel some pride in his security, when he knows that what he does innocently and safely to-day, according to the laws of his country, cannot be tortured into guilt and danger to-morrow. But if it should happen, that a great and over-ruling necessity, acknowledged and felt by all, should make a deviation from this prohibition excusable, shall we not be more safe in leaving the excuse for an extraordinary exercise of power to rest upon the apparent equity of it alone, than to leave the door open to a tyranny it would be intolerable to bear? In the one case every one must be sensible of its justice, and therefore excuse it: In the other, whether its exercise was just or unjust, its being lawful would be sufficient to command obedience. Nor would a case like that, resting entirely on its own bottom, from a conviction of invincible necessity, warrant an avowed abuse of another authority where no such necessity existed or could be pretended.

I have now gone through Mr. Mason’s objections; one thing still remains to be taken notice of; his prediction, which he is pleased to express in these words: “This government will commence in a modern aristocracy; it is at present impossible to foresee, whether it will, in its operation, produce a monarchy or a corrupt oppressive aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other.” From the uncertainty of this prediction, we may hope Mr. Mason was not divinely inspired when he made it, and of course that it may as fairly be questioned as any of his particular objections. If my answers to his objections are in general solid, a very different government will arise from the new Constitution if the several States should adopt it, as I hope they will. It will not probably be too much to flatter ourselves with, that it may present a spectacle of combined strength in

government; and genuine liberty in the people the world has never yet beheld. In the mean time our situation is critical to the greatest degree. Those gentlemen who think we may at our ease go on from one Convention to another, to try if all objections cannot be conquered by perseverance, have much more sanguine expectations that I can presume to form. There are critical periods in the fate of nations, as well as in the life of man, which are not to be neglected with impunity. I am much mistaken if this is not such a one with us. When we were at the very brink of despair, the late excellent Convention, with an unanimity that none could have hoped for, generously discarding all little considerations, formed a system of government which I am convinced can stand the nicest examination, if reason and not prejudice is employed in viewing it. With a happiness of thought, which in our present awful situation ought to silence much more powerful objections than any I have heard, they have provided in the very frame of government a safe, easy and unexceptionable method of correcting any errors it may be thought to contain. These errors may be corrected at leisure; in the mean time the acknowledged advantages likely to flow from this Constitution may be enjoyed. We may venture to hold up our head among the other powers of the world. We may talk to them with the confidence of an independent people, having strength to resent insults, and avail ourselves of all our natural advantages. We may be assured of once more beholding justice, order and dignity taking place of the present anarchical confusion prevailing almost every where, and drawing upon us universal disgrace. We may hope, by proper exertions of industry, to recover thoroughly from the shock of the late war, and truly to become an independent, great and prosperous people. But if we continue as we now are, wrangling about every trifle, listening to the opinion of a small minority in preference to a large and most respectable majority of the first men in our country, and among them some of the first in the world; if our minds in short, are bent rather on indulging a captious discontent, than bestowing a generous and well-placed confidence in those who we have every reason to believe are entirely worthy of it, we shall too probably present a spectacle for malicious exultation to our enemies, and melancholy dejection to our friends; and the honor, glory and prosperity which were just within our reach, will, perhaps be snatched from us for ever.

January, 1788.

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