

Plain Truth: Reply to An Officer of the Late Continental Army, *Independent Gazetteer*, 10 November 1787

Friend Oswald, Seeing in thy paper of yesterday, twenty-three objections to the new plan of federal government, I am induced to trouble the public once more; and shall endeavor to answer them distinctly and concisely. That this may be done with candor, as well as perspicuity, I request thee to reprint them as they are stated by "*An Officer of the Late Continental Army*," and to place my answers in the same order.

I shall pass over everything that is not in point, and leave the strictures on friend [James] W[ilson] to those who are acquainted with him. I will only observe that "his lofty carriage," is very likely to be the effect of habit; for I know by experience that a man who wears spectacles must keep his head erect to see through them with ease and to prevent them from falling off his nose.

Now for the objections.

"1. It is not merely (as it ought to be) a CONFEDERATION of STATES, but a GOVERNMENT of INDIVIDUALS."

Answer 1. It is more a government *of the people*, than the present Congress ever was, because, the members of Congress have been hitherto chosen by the legislatures of the several states. The proposed Representatives are to be chosen "BY THE PEOPLE." If therefore it be not a confederation of *the states*, it is a popular compact, something more in favor of liberty. (Article I, section 2.)

"2. The powers of Congress extend to the *lives*, the *liberties* and the *property* of every citizen."

2. Is there a government on earth where the life, liberty and property of a citizen may not be forfeited by a violation of the laws of God and man? It is only when justified by such crimes, that the new government has such power; and all crimes (except in cases of impeachment) are expressly to be TRIED BY JURY, *in the state where they may be committed*. (Article 3, section 2.)

"3. The *sovereignty* of the different states is *ipso facto* destroyed in its most essential parts."

3. Can the sovereignty of each state in all its parts exist, if there be a sovereignty over the whole? Is it not nonsense in terms to suppose an united government *of any kind* over 13 coexistent sovereignties? "It is obviously impracticable in the federal government of these states, to secure all the rights of independent sovereignty to each, and yet provide for the interest and safety of all." (President's letter.)2

"4. What remains of it will only tend to create violent dissensions between the state governments and the Congress, and terminate in the ruin of the one or the other."

4. No such dissension can happen unless some state oppose the interests of the whole collectively; and it is to overcome such opposition by a majority of 12 to 1, “to ensure domestic tranquility, to provide for the common defence, promote the general welfare, and secure the blessings of liberty,” that the Union is now, and has ever been thought indispensable. (Introduction to the new plan.)

“5. The consequence must therefore be, either that the *Union* of the states will be destroyed by a violent struggle or that their sovereignty will be swallowed up by silent encroachments into a universal aristocracy; because it is clear that if two different *sovereign powers* have a coequal command over the *purses* of the citizens, they will struggle for the spoils, and the weakest will be in the end obliged to yield to the efforts of the strongest.”

5. The preceding petition being eradicated, this *consequence* falls to the ground. It may be observed, however, that the revenue to be raised by Congress is not likely to interfere with the taxes of any state. Commerce is the source to which they will naturally apply, because that is one great and uniform object, and they cannot attend to detail. The burden too will, in this way, be scarcely felt by the people. All foreigners who may sell merchandise at a loss (and that often has been, and often will be the case in an extensive degree) will pay the impost in addition to that loss, and the duties on all that may be sold at a profit will be eventually paid by the consumers. Thus the taxes will be insensibly included in the price, and every man will have the power of refusal by not consuming the taxed luxuries.

“6. Congress being possessed of these immense powers, the liberties of the states and of the people are not secured by a bill or DECLARATION of RIGHTS.”

6. Notwithstanding all that has been written against it, I must recur to friend W[ilson]’s definition on this subject. A state government is designed for ALL CASES WHATSOEVER, consequently what is not reserved is tacitly given. A federal government is expressly only for FEDERAL PURPOSES, and its power is consequently bounded by the terms of the compact. In the first case a bill of rights is indispensable, in the second it would be at best useless, and if one right were to be omitted, it might injuriously grant, by implication, what was intended to be reserved.

“7. The *sovereignty* of the states is not expressly reserved, the *form* only, and not the SUBSTANCE of their government, is guaranteed to them by express words.”

7. When man emerged from a state of nature, he surely did not reserve the natural right of being the judge of his wrongs and the executioner of the punishments he might think they deserved. A renunciation of such rights is the price he paid for the blessings of good government; and for the same reason, state sovereignty (as I have before observed) is as incompatible with the federal Union, as the natural rights of human vengeance is with the peace of society.

“The United States shall guarantee to every state, a republican form of government.” That is, they shall guarantee it against monarchical or aristocratical encroachments. Congress can go no further, for the states would justly think themselves insulted, if they should presume to interfere in other alterations which may be individually thought more consistent with the good of the people. (Article 4, section 4.)

“8. TRIAL BY JURY, that sacred bulwark of liberty, is ABOLISHED IN CIVIL CASES, and Mr. [James] W[ilson], one of the Convention, has told you, that not being able to agree as to the FORM of establishing this point, they have left you deprived of the SUBSTANCE.³ Here is his own words: *‘The subject was involved in difficulties. The Convention found the task TOO DIFFICULT for them, and left the business as it stands.’*”

8. Trial by jury has been seen to be expressly preserved in criminal cases. In civil cases, the federal court is like a court of chancery, except that it has original jurisdiction only in state affairs; in all other matters it has “appellate jurisdiction both as to law and fact, *with such exceptions and under such regulations as congress shall make.*” (Article 3, section 2.) Nobody ever complained that trials in chancery were not by jury. A court of chancery “may issue injunctions in various stages of a cause,” saith Blackstone, “and stay oppressive judgment.” Yet courts of chancery are everywhere extolled as the most equitable; the federal court has not such an extent of power, and what it has is to be always under the *exceptions and regulations of the United States in Congress.*

Friend W[ilson] has well observed that it was impossible to make one imitation of thirteen different models, and the matter seems now to stand, as well as human wisdom can permit.

“9. THE LIBERTY OF THE PRESS is not secured, and the powers of Congress are fully adequate to its destruction, as they are to have the trial of *libels*, or *pretended libels* against the United States, and may by a cursed abominable STAMP ACT (as the *Bowdoin administration* has done in Massachusetts) preclude you effectually from all means of information. *Mr. W[ilson] has given you no answer to these arguments.*”

9. The liberty of the press in each state can only be in danger from the laws of that state, and it is everywhere well secured. Besides, as the new Congress can only have the defined powers given, it was needless to say anything about liberty of the press, liberty of conscience, or any other liberty that a freeman ought never to be deprived of. It is remarkable in this instance, that among all the cases to which the federal jurisdiction is to extend (Article 3) not a word is said of “*libels or pretended libels.*” Indeed in this extensive continent, and among this enlightened people, no government whatever *could* control the press. For after all that is said about “balance of power,” there is one power which no tyranny on earth could subdue if once roused by this great and general grievances, that is THE PEOPLE. This respectable power has preserved the press in Great Britain in spite of government; and none but a madman could ever think of controlling it in America.

“10. Congress have the power of keeping up a STANDING ARMY in time of peace, and Mr. W[ilson] has told you THAT IT IS NECESSARY.”

10. The power here referred to is this, “to raise and support armies, *but no appropriation of money to that use shall be for a longer term than two years.*” (Article I, section 8.) Thus the representatives of the people have it in their power to disband this army every two years, by refusing supplies. Does not every American feel that no standing army in the power of Congress to raise, could support despotism over this immense continent, where almost every citizen is a soldier? If such an apprehension came, in my opinion, within the bounds of possibility, it would not indeed become my principles to oppose this objection.

“11. The LEGISLATIVE and EXECUTIVE powers are not kept separate [as] every one of the American constitutions declares they ought to be; but they are mixed in a manner entirely novel and unknown, even to the constitution of Great Britain.”

11. The first Article of the Constitution defines the legislative, the second, the executive, and the third the judicial powers; this does not seem like *mixing* them. It would be strange indeed if a professed democratist should object, that the President’s power is made subject to “the advice and consent of two-thirds of the senate.” (Article 2, section 2.)

“12. In England, the king only has a *nominal negative* over the proceedings of the legislature, which he has NEVER DARED TO EXERCISE since the days of *King William*, whereas by the new Constitution, both the *President General* and the *Senate*, TWO EXECUTIVE BRANCHES OF GOVERNMENT, have that negative and are intended to *support each other in the exercise of it.*”

12. Whoever will read the 7th section of the 4th Article, will see that the President has only a *conditional* negative, which is effectual or not as two-thirds of the Senate and two-thirds of the Representatives may on reconsideration determine. If the “*two executive branches*” (as they are here called) should agree in the negative, it would not be novel, as to the power of the Senate; for I believe every senate on the continent, and every upper house in the world, may refuse concurrence and quash a bill before it arrives at the executive department. The king of England has an *unconditional* negative, and has often exercised it in his former colonies.

“13. The representation of the lower house is too small, consisting only of 65 members.”

13. The Congress on the old plan had but 13 voices, and of these, some were frequently lost by equal divisions. If 65 voices be yet too few, it must follow that the new plan has made some progress towards perfection.

“14. That of the *Senate* is so small that it renders its extensive powers extremely dangerous. It is to consist only of 26 members, two-thirds of whom must concur to conclude any *treaty or alliance* with foreign powers. Now we will suppose that five of them are absent, sick, dead, or unable to attend; *twenty-one* will remain, and eight of these (*one-third* and *one over*) may

prevent the conclusion of any treaty, even the most favorable to America. Here will be a fine field for the intrigues and even the *bribery* and *corruption* of European powers.”

14. This like the former objection is mere matter of opinion. The instance as to supposed vacancies does not apply, for “if vacancies happen by resignation *or otherwise* during the recess of the legislature of any state, the executive thereof may make temporary appointments until the meeting of the legislature which shall then fill such vacancies.” (Article I, section 3.) This provision expressly implies that accidental vacancies shall be *immediately* filled.

“15. The most important branches of the EXECUTIVE DEPARTMENT are to be put into the hands of a *single magistrate*, who will be in fact an ELECTIVE KING. The MILITARY, the land and naval forces are to be entirely at his disposal.”

15. It was mentioned as a grievance in the 12th objection that this supposed “elective king,” had his powers clogged by the conjunction of another branch; here he is called a “*single magistrate*.” Yet the new Constitution provides that he shall act “by and with the advice and consent of the senate” (Article 2, section 2), and can in no instance act alone, except in the cause of humanity by granting reprieves or pardons.

“16. Should the *Senate*, by the intrigues of foreign powers, become devoted to foreign influence, as was the case of late in *Sweden*, the people will be obliged, as the *Swedes* have been, to seek their refuge in the arms of the *monarch* or PRESIDENT GENERAL.”

16. The comparison of a little kingdom to a great republic cannot be just. The revolution in Sweden was the affair of a day, and the success of it was owing to its confined bounds. To suppose a similar event in this extensive country, 3000 miles distant from European intrigues, is, in the nature of things, a gross absurdity.

“17. ROTATION, that noble prerogative of liberty, is entirely excluded from the new system of government, and great men may and probably will be continued in office during their lives.”

17. How can this be the case, when at stated periods the government reverts to the people, and to the representatives of the people, for a new choice in every part of it.

“18. ANNUAL ELECTIONS are abolished, and the people are not to reassume their rights until the expiration of *two, four* and *six* years.”

18. Annual changes in a federal government would beget confusion; it requires years to learn a trade, and men in this age are not legislators by inspiration. One-third of the Senate as well as all the Representatives are to be elected every *two* years. (Article I, section 3.)

“19. Congress are to have the power to fixing the *time, place* and *manner* of holding elections, so as to keep them forever subjected to their influence.”

19. Congress are not to have power to fix the place of choosing Senators; and the time, place, and manner of electing Representatives are to be fixed by each state itself. Congress indeed are to have control to prevent undue influence in elections, which we all know but too often happens through party zeal. (Article I, section 4.)

“20. The importation of slaves is not to be prohibited until the year 1808, and SLAVERY will probably resume its empire in Pennsylvania.”

20. This is fully answered in my letter to Timothy,⁴ but it may not be amiss to repeat that Congress will have no power to meddle in the business til 1808. All that can be said against this offending clause is, that we may have no alteration in this respect for 21 years to come, but 21 years is fixed as a period when we may be better, and in the meantime we cannot be worse than we are now. (Article I, section 9.)

“21. The MILITIA is to be under the immediate command of Congress, and men *conscientiously scrupulous of bearing arms* may be compelled to perform military duty.”

21. Congress may “provide for *calling forth* the militia, and may provide for organizing, arming and disciplining it.” But the states respectively can only *raise it*, and they expressly reserve the right of “appointment of officers and of training it.” Now we know that men conscientiously scrupulous by sect or profession are not *forced* to bear arms in any of the states, a pecuniary compensation being accepted in lieu of it. Whatever may be my sentiments on the present state of this matter is foreign to the point. But it is certain that whatever redress may be wished for, or expected, can only come from *the state legislature*, where, and where only, the dispensing power, or enforcing power, is *in the first instance* placed. (Article [I], section 8.)

“22. The new government will be EXPENSIVE beyond any we have ever experienced, the *judicial* department alone, with its concomitant train of *judges, justices, chancellors, clerks, sheriffs, coroners, escheators, state attornies and solicitors, constables, etc.* in every state and in every county in each state, will be a burden beyond the utmost abilities of the people to bear.”

22. This mighty expense would be paid by about one shilling a man throughout the states. The other part of this objection is not intelligible, nothing is said in the new Constitution of a judicial department in “*states and counties*,” other than what is already established.

“23. A government partaking of MONARCHY and aristocracy will be fully and firmly established, and liberty will be but a name to adorn the *short* historic page of the halcyon days of America.”

23. The 5th Article expressly provides against every danger, by pointing out a mode of amendment when necessary. And liberty will thus be a name to adorn the *long* historic page of American virtue and happiness.

Thus I have answered all the objections, and supported my answers by fair quotations from the new Constitution; and I particularly desire my readers to examine all the references with

accurate attention. If I have mistaken any part, it will, I trust, be found to be an error of judgment, not of will, and I shall thankfully receive any candid instruction on the subject. One quotation more and I have done. "In all our deliberations on this subject (saith GEORGE WASHINGTON) we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the Constitution which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable."

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