America
New York *Daily Advertiser*, 31 December 1787 (excerpts)

To the DISSENTING MEMBERS of the
late CONVENTION of PENNSYLVANIA.

Gentlemen, Your long and elaborate publication, assigning the reasons for your refusing to subscribe the ratification of the NEW FEDERAL CONSTITUTION, has made its appearance in the public papers, and, I flatter myself, will be read throughout the United States. It will feed the flame of opposition among the weak, the wicked, the designing, and the factious; but it will make many new converts to the proposed Government, and furnish the old friends of it with new weapons of defence. . . .

You begin with some *gratis dicta*, which are denied; you assume *premises* which are *totally false*, and then reason on them with great address. Your whole reasoning, and that of all the opposers of the Federal Government, is built on this *false principle*, that the *Federal Legislature* will be a body *distinct from* and *independent* of the people. Unless your opposition is grounded on *that principle*, it stands on *nothing*: and on any *other* supposition, your arguments are but *declamatory nonsense*.

But the principle is false. The Congress, under the proposed Constitution, will have the *same interest* as the people—they are a *part* of the people—their interest is *inseparable* from that of the people; and this union of interest will eternally remain, while the right of election shall continue in the people. Over this right Congress will have no control: the time and manner of exercising that right are very wisely vested in Congress, otherwise a delinquent State might embarrass the measures of the Union. The safety of the public requires that the Federal body should prevent any particular delinquency; but the *right of election* is above their control: it *must* remain in the people, and be exercised once in two, four or six years. A body thus organized, with thirteen Legislatures watching their measures, and several millions of jealous eyes inspecting their conduct, would not be apt to betray their constituents. Yet this is not the best ground of safety. The first and almost only principle that governs men, is *interest*. *Love of our country* is a powerful auxiliary motive to patriotic actions; but rarely or never operates against *interest*. The only requisite to secure liberty, is to connect the *interest* of the *Governors* with that of the *governed*. Blend these interests—make them inseparable—and both are safe from voluntary invasion. How shall this union be formed? This question is answered. The union is formed by the equal principles on which the people of these States hold their property and their rights. But how shall this union of interests be perpetuated? The answer is easy—bar all perpetuities of estates—prevent any exclusive rights—preserve all preferment dependent on the choice of the people—suffer no

power to exist independent of the people or their Representatives. While there exists no power in a State, which is independent on the will of the electors, the rights of the people are secure. The only barrier against tyranny, that is necessary in any State, is *the election of Legislators* by the yeomanry of that State. Preserve *that*, and every privilege is safe. The Legislators thus chosen to represent the people, should have all the power that the people would have, were they assembled in one body to deliberate upon public measures. The distinction between the powers of the *people* and of their *Representatives* in the Legislature, is as absurd in *theory*, as it proves pernicious in *practice*. A distinction, which has already countenanced and supported *one rebellion* in America; has prevented many *good* measures; has produced many *bad*; has created animosities in many States, and embarrassments in all.[2] It has taught the people a lesson, which, if they continue to practise, will bring laws into contempt, and frequently mark our country with blood.

You object, Gentlemen, to the powers vested in Congress. Permit me, to ask you, where will you limit their powers? What bounds will you prescribe? You will reply, *we will reserve certain rights, which we deem invaluable, and restrain our rulers from abridging them.* But, Gentlemen, let me ask you, how will you define these rights? would you say, *the liberty of the Press shall not be restrained*? Well, what is this liberty of the Press? Is it an unlimited licence to publish *any thing and every thing* with impunity? If so, the Author, and Printer of any treatise, however obscene and blasphemous, will be screened from punishment. You know, Gentlemen, that there are books extant, so shockingly and infamously obscene and so daringly blasphemous, that no society on earth, would be vindicable in suffering the publishers to pass unpunished. You certainly know that such cases *have* happened, and *may* happen again—nay, you know that they are *probable*. Would not that indefinite expression, *the liberty of the Press*, extend to the justification of every *possible publication*? Yes, Gentlemen, you know, that under such a general licence, a man who should publish a treatise to *prove his maker a knave*, must be screened from legal punishment. I shudder at the thought!—But the truth must not be concealed. The Constitutions of several States *guarantee that very licence*.

But if you attempt to define the *liberty of the Press*, and ascertain what cases shall fall within that privilege, during the course of centuries, where will you *begin*? Or rather, where will you *end*? Here, Gentlemen, you will be puzzled. Some publications certainly *may* be a breach of civil law: You will not have the effrontery to deny a truth so obvious and intuitively evident. Admit that principle; and unless you can define precisely the cases, which are, and are not a breach of law, you have no right to say, the liberty of the Press shall not be restrained; for such a license would warrant *any breach of law*. Rather than hazard such an abuse of privilege, is it not better to leave the right altogether with your rulers and your posterity? No attempts have ever been made by a Legislative body in America, to abridge that privilege; and in this free enlightened country, no attempts could succeed, unless the public should be convinced that an abuse of it would warrant the restriction. Should this ever be the case, you have no right to say, that a future Legislature, or that posterity shall not abridge the privilege, or punish its abuses. The very attempt to establish a permanent, unalterable Constitution, is an act of consummate arrogance. It is a presumption that we have all possible wisdom—that we can foresee all possible circumstances—and judge for future generations, better than they can for themselves.

But you will say, that trial by jury, is an unalienable right, that ought not to be trusted with our rulers. Why not? If it is such a darling privilege, will not Congress be as fond of it, as their

constituents? An elevation into that Council, does not render a man insensible to his privileges, nor place him beyond the necessity of securing them. A member of Congress is liable to all the operations of law, except during his attendance on public business; and should he consent to a law, annihilating any right whatever, he deprives himself, his family and estate, of the benefit resulting from that right, as well as his constituents. This circumstance alone, is a sufficient security.

But, why this outcry about juries? If the people esteem them so highly, why do they ever neglect them, and suffer the trial by them to go into disuse? In some States, *Courts of Admiralty* have no juries—nor Courts of Chancery at all. In the City-Courts of some States, juries are rarely or never called, altho' the parties may demand them; and one State, at least, has lately passed an act, empowering the parties to submit both *law* and *fact* to the Court. It is found, that the judgment of a Court, gives as much satisfaction, as the verdict of a jury, as the Court are as good judges of fact, as juries, and much better judges of law. I have no desire to abolish trials by jury, although the original design and excellence of them, is in many cases superseded.—While the people remain attached to this mode of deciding causes, I am confident, that no Congress can wrest the privilege from them.

But, Gentlemen, our legal proceedings want a reform. Involved in all the mazes of perplexity, which the chicanery of lawyers could invent, in the course of 500 years, our road to justice and redress is tedious, fatiguing and expensive. Our Judicial proceedings are capable of being simplified, and improved in almost every particular. For God's sake, Gentlemen, do not shut the door against improvement. If the people of America, should ever spurn the shackles of opinion, and venture to leave the road, which is so overgrown with briers and thorns, as to strip a man's cloaths from his back as he passes, I am certain they can devise a more easy, safe, and expeditious mode of administering the laws, than that which harrasses every poor mortal, that is wretched enough to want *legal* justice. In Pennsylvania, where very respectable merchants, have repeatedly told me, they had rather lose a debt of fifty pounds, than attempt to recover it by a legal process, one would think that men, who value liberty and property, would not restrain any Government from suggesting a remedy for such disorders.

Another right, which you would place beyond the reach of Congress, is the writ of *habeas corpus*. Will you say that this right may not be suspended in *any* case? You dare not. If it may be suspended in any case, and the Congress are to judge of the necessity, what security have you in a declaration in its favor? You had much better say nothing upon the subject.

But you are frightened at a standing army. I beg you, Gentlemen, to define a *standing army*. If you would refuse to give Congress power to raise troops, to guard our frontiers, and garrison forts, or in short, to enlist men for any purpose, then we understand you—you tie the hands of your rulers so that they cannot defend you against any invasion. This is protection indeed! But if Congress can raise a body of troops for a year, they can raise them for a *hundred years*, and your declaration against *standing armies* can have no other effect, than to prevent Congress from denominating their troops, a *standing army*. You would only introduce into this country, the English farce of mechanically passing an annual bill for the support of troops which are never disbanded.

You object to the indefinite power of taxation in Congress. You must then limit the exercise of that power by the sums of money to be raised; or leaving the sums indefinite, must prescribe

the *particular mode* in which, and the *articles* on which the money is to be raised. But the sums cannot be ascertained, because the necessities of the States cannot be foreseen nor defined. It is beyond even *your* wisdom and profound knowledge, Gentlemen, to ascertain the public exigencies, and reduce them to the provisions of a Constitution. And if you would prescribe the mode of raising money, you will meet with equal difficulty. The different States have different modes of taxation, and I question much whether even *your* skill, Gentlemen, could invent a uniform system that should sit easy upon every State. It must therefore be left to experiment, with a power that can correct the errors of a system, and suit it to the habits of the people. And if no uniform mode will answer this purpose, it will be in the power of Congress to lay taxes in each State, according to its particular practice. But you know, Gentlemen, that an efficient Federal Government will render taxes unnecessary—*that it will ease the people of their burdens*, and *remove their complaints*, and therefore when you raise a clamor about the right of taxation, you must be guilty of the *basest design*—your hearts must be as *malignant* as your actions have been *insidious*. You know that requisitions on the States are ineffectual—That they cannot be rendered effectual, but by a compulsory power in Congress—You know that without an efficient power to raise money, Government cannot secure person, property or justice—Nay, you know further, that such power is as safely lodged in your *Representatives* in Congress, as it is in your *Representatives* in your distinct Legislatures.

You would likewise restrain Congress from requiring *excessive bail*, or imposing *excessive fines* and *unusual punishment*. But unless you can, in every possible instance, previously define the words *excessive* and *unusual*—if you leave the discretion of Congress to define them on occasion, any restriction of their power by a general indefinite expression, is a nullity—mere *formal nonsense*. What consummate arrogance must you possess, to presume you can *now* make *better* provision for the Government of these States, during the course of ages and centuries, than the future Legislatures can, on the spur of the occasion! Yet your whole reasoning on the subject implies this arrogance, and a presumption that you have a right to legislate for posterity!

But to complete the list of unalienable rights, you would insert a clause in your declaration, *that every body shall, in good weather, hunt on his own land, and catch fish in rivers that are public property*. Here, Gentlemen, you must have exerted the whole force of your genius! Not even the *all-important* subject of *legislating for a world* can restrain my laughter at this clause! As a supplement to that article of your bill of rights, I would suggest the following restriction:—"That Congress shall never restrain any inhabitant of America from eating and drinking, *at seasonable times*, or prevent his lying on his *left side*, in a long winter's night, or even on his back, when he is fatigued by lying on his *right*."—This article is of just as much consequence as the 8th clause of your proposed bill of rights.

But to be more serious, Gentlemen, you must have had in idea the forest-laws in Europe, when you inserted that article; for no circumstance that ever took place in America, could have suggested the thought of a declaration in favor of hunting and fishing. Will you forever persist in error? Do you not reflect that the state of property in America, is directly the reverse of what it is in Europe? Do you not consider, that the forest-laws in Europe originated in *feudal tyranny*, of which not a trace is to be found in America? Do you not know that in this country almost every farmer is Lord of his own soil? That instead of suffering under the oppression of a Monarch and Nobles, a class of haughty masters, totally independent of the people, almost every man in

America is a *Lord himself*—enjoying his property in fee? Where then the necessity of laws to secure hunting and fishing? You may just as well ask for a clause, giving licence for every man to till *his own land*, or milk *his own cows*. The Barons in Europe procured forest-laws to secure the right of hunting on *their own land*, from the intrusion of those who had no property in lands. But the distribution of land in America, not only supersedes the necessity of any laws upon this subject, but renders them absolutely trifling. The same laws which secure the property in land, secure to the owner the right of using it as he pleases.

But you are frightened at the prospect of a *consolidation of the States*. I differ from you very widely. I am afraid, after all our attempts to unite the States, that contending interests, and the pride of State-Sovereignties, will either prevent our union, or render our Federal Government weak, slow and inefficient. The danger is all on this side. If any thing under Heaven now endangers our liberties and independence, it is that single circumstance.

You harp upon that clause of the New Constitution, which declares, that the laws of the United States, &c. shall be the supreme law of the land; when you know that the powers of the Congress are defined, to extend only to those matters which are in their nature and effects, *general*. You know, the Congress cannot meddle with the internal police of any State, or abridge its Sovereignty. And you know, at the same time, that in all general concerns, the laws of Congress must be *supreme*, or they must be *nothing*.

But the public will ask, who are these men that so violently oppose the New Constitution? I will tell them. You are the heads of that party, Gentlemen, which, on the celebration of a very glorious event in Philadelphia, at the close of the war, collected in a mob, and broke the windows of the Quakers, and committed the most detestable outrages, because their religion would not suffer them to illuminate their windows, and join in the rejoicings.[2] You are the men, Gentlemen, that wrested the Charter from the Bank, without the least justifiable pretence; sporting with a grant which *you* had made, and which had never been forfeited.[3] You are the men, that, without a show of right, took away the Charter of the University, and vested it in the hands of your own tools.[4] Yes, Gentlemen, you are the men, who prescribed a test law and oath of abjuration in Pennsylvania,[5] which excluded more than half the Citizens of the State from all Civil Offices. A law, which, had it not been altered by the efforts of more reasonable men, would have established you, and your adherents, as an Aristocratic junto, in all the offices and emoluments of the State. Could your base designs have been accomplished, *you* would have rioted in all the benefits of Government, and Pennsylvania would now, have been subject to as tyrannical an Aristocracy, as ever cursed Society. Such has been the uniformly infamous conduct of the men, who now oppose the best Constitution of Government, ever devised by human wisdom.

But the most bare-faced act of tyranny and wickedness, which has distinguished your political characters, remains to be mentioned. You are the men, Gentlemen, who have abandoned your parts of duty, and betrayed the constitutional rights of the State of Pennsylvania, by *seceding from the Legislature*, with the design of defeating the measures of a constitutional quorum of the House.[6] Yes, Gentlemen, and to add to the infamy of your conduct, you have the audacity to *avow the intention*. Will you then attempt to palliate the crime, by saying it was *necessary*? Good Heavens! *necessary* that a State should be *ruled by a minority! necessary* that the sense of a legislature should be defeated by a junto, which had labored incessantly, for four years, to establish an *Aristocracy* in the State! The same principle which will vindicate you, will justify any *one* man

in defeating the sense of the *whole* State. If a minority may prevent a law, one man may do it; but is this liberty? Is this your concern for the rights of the State? Dare you talk of rights, which you have so flagrantly invaded? Will the world expect *you* to be the guardians of privileges? No, Gentlemen, they will sooner expect lessons of morality from the wheel-barrowed criminals, that clank their chains along your streets.[7]

Do you know, Gentlemen, that you are treading in the steps of the Governors before the revolution? Do you know that from the first settlement of Pennsylvania, there was a contest between the people and the deputies of the proprietaries? And that when a Governor could not bring the Assembly to resign their rights, he would *prevail on certain members to leave the House*, and prevent their measures. Yes, Gentlemen, you are but following the precedents of your tyrannical Governors.[(a)] You have begun, and pursued, with unwearied perseverance, the same plan of Despotism which wrought the late revolution; and, with a calm, hypocritical phiz, pretend to be *anxious for the liberties of the people*.

These facts stare you in the face! They are *felt* in Pennsylvania—and *known* to the world! There is not a spot in the United States, where the solemnity of contracts and grants, has been so sacrilegiously violated—and the rights of men so wantonly and perseveringly abused, as by you and your junto in Pennsylvania[8]—except only, in the little detestable corner of the continent, called *Rhode-Island*. Thanks be to the Sovereign Ruler of events, you are checked in your career of tyranny—your power is dwindling into impotence—and your abuse of the respectable Convention, and of the friends of our Federal Union, will shroud you in oblivion, or accelerate your progress to merited contempt.

(a) *See, a Review of the Constitution and Government of Pennsylvania, Page* 24.[9]

1. This essay was written by Noah Webster who, according to his diary for 28 December, was "Busy answering the address of the dissenting members of Pensylvania."

2. In 1777 the Constitutionalist-dominated Supreme Executive Council tried to protect Quakers who would not illuminate their houses during the celebrations of important events.

3. The Republican-controlled Bank of North America was chartered by Congress on 31 December 1781 and by the Pennsylvania legislature in early 1782. Constitutionalists tried unsuccessfully to limit the Bank's powers. In September 1785 the Constitutionalist-controlled Assembly revoked the Bank's charter, but in March 1787 a Republican Assembly restored it.

4. In November 1779 a Constitutionalist legislature reorganized the College of Philadelphia under the name of the University of the State of Pennsylvania and placed Constitutionalists in the important offices. John Ewing was elected provost, David Rittenhouse vice provost, and George Bryan treasurer. After a long and bitter fight, Republicans restored the old college in 1789.

5. In September 1776 the Pennsylvania Convention, which had adopted a new constitution, required voters to take oaths upholding the constitution and required officeholders to declare their belief in one God and in the divine inspiration of the Scriptures.

6. Refers to the secession of Pennsylvania assemblymen in September 1787.

7. Prisoners, who were required to work on public improvements, were given wheelbarrows to use.

8. Possibly a reference to Pennsylvania's paper money policies enacted during the spring of 1785 that established a loan office and funded the interest due on state and federal securities owned by Pennsylvanians.

9. In 1688 the deputy governor of Pennsylvania, acting for proprietor William Penn, dismissed the Provincial Council because of "Animosities and Dissentions" among the members.

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. XV: Commentaries on the Constitution, Public and Private [3] (Madison, Wis.: Wisconsin Historical Society Press, 1984), 194–203.