

Fabius IV, *Pennsylvania Mercury*, 19 April 1788

OBSERVATIONS ON THE CONSTITUTION

proposed by the FEDERAL CONVENTION.

Another question remains. *How are the contributed rights to be managed?* The resolution has been in great measure anticipated, by what has been said concerning the system proposed. Some few reflections may perhaps finish it.

If it can be considered separately, [a] *Constitution* is the *organization of the contributed rights* in society. *Government* is certainly the *exercise* of them. It is intended for the benefit of *the governed*; of course can have no just powers but what conduce to *that end*: & the awefulness of the trust is demonstrated in this—that it is founded on the nature of man, that is, on the will of his MAKER, and is *therefore* sacred.

Let the reader be pleased to consider the writer, as treating of *equal liberty* with reference to the *people* and *states* of *United America*, and their meditated confederation.

If the organization of a constitution be defective, it may be amended.

A good constitution promotes, but not always produces a good administration.

The government must never be lodged in *a single body*. From such an one, with an unlucky composition of its parts, rash, partial, illegal, and when intoxicated with success, even cruel, insolent, & contemptible edicts, may at times be expected. By *these*, if other mischiefs do not follow, the national dignity may be impaired.

Several inconveniences might attend a division of the government into *two* bodies, that probably would be avoided in another arrangement.

The judgment of *the most enlightened* among mankind, confirmed by *multiplied experiments*, points out the propriety of government being committed to such a number of great departments, as can be introduced *without confusion, distinct in office, and yet connected in operation*. It seems to be agreed, that *three* or *four* of these departments are a competent number.

Such a repartition appears well calculated, to encrease the safety and repose of *the governed*, which, with the advancement of their happiness in other respects, are the objects of government; as thereby there will be more obstructions interposed, against errors, feuds, and frauds, in the administration, and the interference of the people need be less frequent. Thus, wars, tumults, and uneasinesses, are avoided. The departments so constituted, may *therefore* be said to be *balanced*.

But, notwithstanding, it must be granted, that a bad administration may take place. What is then to be done? The answer is instantly found—Let the *Fasces* be lowered before—not the *Majesty*, it is not a term fit for mortals—but, before the *supreme sovereignty* of the people. IT IS THEIR DUTY TO WATCH, AND THEIR RIGHT TO TAKE CARE, THAT THE CONSTITUTION BE PRESERVED; or in the *Roman* phrase on perilous occasions—TO PROVIDE, THAT THE REPUBLIC RECEIVE NO DAMAGE.

Political bodies are *properly* said to be *balanced*, with respect to this primary origination and ultimate destination, not to any intrinsic or constitutional properties. It is the power from which they *proceed*, and which they *serve*, that truly and of right *balances* them.

But, as a good constitution not always produces a good administration, a defective one not always excludes it. Thus, in governments very different from those of United *America*, general manners and customs, improvement in knowledge, and the education and disposition of princes, not unfrequently soften the features, and qualify the defects. Jewels of value are substituted, in the place of the rare and genuine orient of highest price and brightest lustre: and though the sovereigns *cannot* even in their ministers, be brought to account by the governed, yet there are instances of their conduct indicating a veneration for the rights of the people, and an internal conviction of the guilt that attends their violation. Some of them appear to be *fathers of their countries*. Revered princes! *Friends of mankind!* May peace be in their lives, and hope sit smiling¹ in their beds of death.

By this animating, presiding will of the people, is meant a reasonable, not a distracted will. When frenzy seizes the mass, it would be madness to think of their happiness, that is, of their freedom. They will infallibly have a *Philip* or a *Cæsar*, to bleed them into soberness of mind. At present we are cool; and let us attend to our business.

Our government under the proposed confederation, will be guarded by a repetition of the strongest cautions against excesses. In the *senate* the *sovereignties* of the several states will be *equally* represented; in the *house of representatives*, the *people* of the whole union will be *equally represented*; and, in the *president*, and the federal independent *judges*, so much concerned in the execution of the laws, and in the determination of their constitutionality, the *sovereignties* of the several states and the *people* of the whole union, will be *conjointly* represented.

Where was there ever or where is there now upon the face of the earth, a government so diversified and attempered? If a work formed with so much deliberation, so respectful and affectionate an attention to the interests, feelings, and sentiments of all United *America*, will not satisfy, what would satisfy all United *America*?

It seems highly probable, that those who would reject this labour of public love, would also have rejected the Heaven-taught institution of trial by jury, had they been consulted upon its establishment. Would they not have cried out, that there never was framed so detestable, so paltry, and so tyrannical a device for extinguishing freedom, and throwing unbounded domination into the hands of the king and barons, under a contemptible pretence of preserving

it? What! Can *freedom* be preserved by *imprisoning* its *guardians*? Can *freedom* be preserved, by keeping *twelve* men *closely confined* without *meat, drink, fire, or candle*, until they *unanimously agree*, and this to be infinitely repeated? Can *freedom* be preserved, by thus delivering up *a number of freemen* to a monarch and an aristocracy, fortified by dependant and obedient judges and officers, to be shut up, *until under duress they speak as they are ordered*? Why can't the twelve jurors *separate*, after hearing the evidence, return to their *respective homes*, and there *take time*, and *think* of the matter *at their ease*? Is there not *a variety of ways*, in which causes have been, and can be tried, without this tremendous, *unprecedented* inquisition? Why then is it insisted on; but because the fabricators of it *know* that it *will*, and *intend* that it *shall* reduce the people to slavery? Away with it—Freemen will never be enthralled by so insolent, so execrable, so pitiful a contrivance.

Happily for us our ancestors thought otherwise. They were not so over-nice & curious, as to refuse blessings, because, they might possibly be abused.

They perceived, that the *uses* included were great and manifest. Perhaps they did not foresee, that from this acorn, as it were, would grow up oaks, that changing their native soil for another element, would bound over raging mountains of waters, bestow and receive benefits around the globe, and *secure the just liberties of the nation for a long succession of ages* As to *abuses*, they trusted to their own spirit for preventing or correcting them: And worthy is it of deep consideration by every friend of freedom, that *abuses* that seem to be but "*trifles*," may be attended by fatal consequences. What can be "*trifling*," that diminishes or detracts from the only defence, that ever was found against "*open attacks* and *secret machinations*." It originates from a knowledge of human nature. With a superior force, wisdom, and benevolence united, it rives the difficulties that have distressed, or destroyed the rest of mankind. It reconciles contradictions, immensity of power, with safety of private station. It is ever new & always the same.

Trial by jury and the dependance of taxation upon representation, those corner stones of liberty, were not obtained by *a bill of rights*, or any other records, and have not been and cannot be preserved by them. They and all other rights must be preserved, by soundness of sense and honesty of heart. Compared with *these*, what are a bill of rights, or any characters drawn upon paper or parchment, those frail remembrancers? Do we want to be reminded, that the sun enlightens, warms, invigorates, and cheers? or how horrid it would be, to have his blessed beams intercepted, by our being thrust into mines or dungeons? Liberty is the sun of freemen, and the beams are their rights.

"It is the duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power this valuable palladium in all its rights; to restore it to its antient dignity, if at all impaired by the different value of property, or otherwise deviated from its first institution; to *amend* it, wherever it is *defective*; and above all, to guard with the most jealous circumspection against the new and arbitrary methods of trial, which, under a variety of plausible pretences, may in time imperceptibly undermine this best preservative of liberty." Trial by jury is our birth-right; and tempted to his own ruin, by some seducing spirit, must be

the man, who in opposition to the genius of United *America*, shall dare to attempt its subversion.

In the proposed confederation, it is preserved inviolable in criminal cases, and cannot be altered in other respects, but when the genius of United *America* demands it.

There seems to be a disposition in men to find fault, no difficult matter, rather than to do right. The works of creation itself have been objected to: and one learned prince declared, that if *he* had been consulted, they would have been improved. With what book has so much fault been found, as with the *Bible*? Perhaps, principally, because it *so clearly and strongly enjoins men to do right*. How many, how plausible objections have been made against it, with how much ardor, with how much pains? Yet, the book has done an immensity of good in the world; would do more, if duly regarded; and might lead the objectors themselves and their posterity to perpetual happiness, if they would value it as they ought.

When objections are made to a system of high import, should they not be weighed against the benefits? Are these great, positive, immediate? Is there a chance of endangering them by rejection or delay? May they not be attained without admitting the objections, supposing the objections to be well founded? If the objections are well founded, may they not be hereafter admitted, without danger disgust, or inconvenience? Is the system so formed, that they may be thus admitted? May they not be of less efficacy, than they are thought to be by their authors? Are they not designed to hinder evils, which are generally deemed to be sufficiently provided against? May not the admission of them prevent benefits, that might otherwise be obtained? In political affairs, is it not more safe and advantageous, for *all* to agree in measures that may not be best, than to quarrel *among themselves*, what are best?

When questions of this kind with regard to the plan proposed, are calmly considered, it seems reasonable to hope, that every faithful citizen of United *America*, will make up his mind, with much satisfaction to himself, and advantage to his country.

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