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## Foreign Spectator II Philadelphia *Federal Gazette*, 24 October 1788

REMARKS on the Amendments to the Federal Constitution, proposed by the Conventions of Massachusetts, New-Hampshire, New-York, Virginia, South and North-Carolina, with the minorities of Pennsylvania and Maryland, by a FOREIGN SPECTATOR.

### NUMBER II.

In treating a momentous and difficult subject, my reasoning may sometimes jar with the principles of many enlightened persons; but my pen shall be guided by a sincere zeal for the liberty and happiness of the union, and by a sacred regard to what I believe to be the truth, without even the least tincture of well-meant dissimulation. This is odious to a candid mind, and justifiable only by extreme necessity. Happily the federal cause does not want such a paltry resource: the better we understand our true situation, the more unanimous, pleasing, and effectual will be the pursuit of our common interest. With a peculiar satisfaction I can also execute my design, without the necessity of reflecting on men or parties: I discuss with modest freedom the actions of public bodies, without any criticism of their motives, or distinction of the individuals that composed them: only observing that the minority of Maryland was but eleven; that the amendments were more or less approved of in the several states; and that those proposed by Massachusetts and South-Carolina are but few; from which we may conclude, that there is much more apparent than real dissention about the constitution.

Our attention is naturally first attracted by this extensive amendment—*That it be explicitly declared, that all powers not expressly delegated by the constitution are reserved to the several states, to be by them exercised.*—Ratification by Massachusetts, 1 am. Ditto 1 by New-Hampshire, North-Carolina, Virginia; 2d by South-Carolina; 1st in the address of the minority of Maryland, and 11th in that of the minority of Pennsylvania—all in words nearly the same. The convention of New-York probably supposed that so many other pointed amendments made this needless. The minority of Pennsylvania inforce it by this addition, *that the sovereignty and independency of the several states shall be retained.* Virginia and North-Carolina strengthen it by this further amendment (17 and 18 respectively) *That those clauses which declare that Congress shall not exercise certain powers, be not interpreted in any manner whatsoever to extend the power of Congress; but that they be construed either as making exceptions to the specified powers, where this shall be the case, or otherwise as inserted merely for greater caution.* The minority of Maryland declare the above amendment to be *absolutely necessary for restraining the general powers given to Congress by the first and last paragraph of the 8th sect. of art. 1st, and the 2d part of the 6th article; those*

*dangerous expressions, by which the bills of rights and constitutions of the several states may be repealed by the laws of Congress, in some degree moderated, and the exercise of constructive power wholly prevented.*

A careless observer must perceive a fearful distrust in these strong barriers. Waving for a moment any superiority, and putting the federal head on a level with the several state governments, would it not be a fair bargain to make this counter declaration, *that every power, whose operation is not evidently confined within the affairs of a particular state, shall explicitly be deemed federal?* The real truth is, that a very nice line cannot be drawn between the federal government and the states, especially in this early stage of the union. The constitution has therefore, in explicitly granting some powers, and expressly refusing others, traced this limit with all the accuracy that is practicable. It leaves, as it were, a small vacant place between the two parties, and says, *the federal government may, in the necessary exertions for the general good, sometimes go out of its usual career; but it shall never trespass on the proper grounds of the states: In the same manner any state may occasionally step over its proper line into this common walk; but shall not touch the federal rights of the union.* This is right and generous; nor will it produce any contention, while both parties have a tolerable share of reason and equity.

I scruple not to assert, that without *some constructive power* the Federal government will not be adequate to every emergency, and I will prove it by examples. Suppose the plague, or a similar epidemic destemper should visit this country: it is a national affair; because it is the interest of every state, that not only its neighbours, but the remotest states may stop the rapid contagion:— The Federal government must then concert general measures; rouse the indolent, and check the selfish, who might reap some benefit from the calamities of a sister state. How much have we already suffered, from the Hessian fly,<sup>1</sup> and what may we not suffer from its rapid progress. Should not the Federal government offer premiums for an effectual remedy, or make other salutary regulations? The same reasoning might be extended to some other considerable national objects.

Congress ought then undoubtedly to have the power of *providing for the general welfare of the United States*, 1st part, 8th sect. 1st art. Again, so far as the states grant certain specified powers, and others which their exigencies may require, they necessarily grant all the requisite means for the execution of them; and the *mode, quality, and degree* of these means cannot possibly be strictly defined I cannot therefore see any impropriety in the 18th part of the above sect. and art. *to make all laws, which shall be necessary and proper, for carrying into execution all the powers vested by this constitution in the government of the United States, or in any department or officer thereof.* At the same time this constructive power cannot be very great. It is limited *first* by the plain sense of the words, *general welfare, laws necessary and proper*, which express an object of great common utility, and the pursuit of it by means the best that can be had, the easiest, cheapest, most effectual. *2dly, By all the explicit stipulations of what Congress shall not do*, sect. 9. art. 1. These are clearly and *bona fide* meant as checks on the Federal power; and to suspect them as lurking traps for the people, is indeed very unreasonable.

I verily believe that if the Federal Constitution was charged with a minute regulation of what may be expedient, and how it should be done, in every possible situation, and with a scrupulous enumeration of all the rights of the states and individuals, it would make a larger volume than the Bible, and yet give rise to more political schisms, than there have been religious ones in all

Christendom, for near 1800 years. A Federal Government clogged with so many weights, confined in every motion, and lamed in every limb, would be an unwieldy useless machine; a gigantic monstrous pageant of the union—all the trouble and expence of it would be fooled away merely to gratify the fickle fancy of political dreamers, or the spleen of gloomy choleric knight-errants.

After all, this childish jealousy would render liberty less secure, because a bold and artful Congress could safely invade the people through the holes they had forgot to stop, without any legal charge of treason; as all that was not reserved in such exact detail, must be supposed fairly granted.

Every man of business knows, that he cannot employ an agent without giving some discretionary powers. In domestic affairs we cannot pin a servant down to stiff minute rules: a blockhead or knave who wants them, is not worth keeping.

That the Federal Constitution should be *the supreme law of the land, is much complained of by the minorities* of Pennsylvania and Maryland. It is however self-evident that two sovereign powers in the same country are a flat contradiction; and that the United States, in reciprocally giving and receiving certain obligations, cannot keep their original sovereignty and independence separately, though they render the independency of the whole more respectable and happy. It is indispensable, that *all the laws of the United States, made in pursuance of the constitution*, should in case of collision prevail over *the constitution and laws of any state*: even laws made by constructive power for the general welfare, 6th art. 2d. part: But the spirit of the constitution requires an impartial regard to the common good of the union, and by no means warrants a sacrifice of the essential interests of any one state to some general but small advantage of the United States.

That either the explicit or constructive powers of Congress, may gradually abolish the state governments, is a chimera now almost out of date. Those who want more information on this head, may consult the well-written *address to the minority of Pennsylvania*, signed a Freeman. (See Carey's Museum for February, March and April last.) There is, however, yet, a pretty general and strong reluctance among the states, to make the necessary concessions; and it seems requisite to fix a general, simple, and precise idea of the federal government. It is formed by the people, and for the good of the people; its first object is therefore to secure the grand interests of the individuals who compose the states: the second, to preserve the political powers of these states, is but of an inferior quality, and subordinate to the first. It is of the greatest moment to every citizen of America, to be protected in his life, property, liberty, family, and all the dear interests of human nature; but whether the state in which he resides, has such a particular constitution, is less material. If the confederacies did not exist, the several states would in process of time, undergo many capital changes in their legislative, judicial, and executive forms: probably the large ones would even be divided;—why then should we stickle for the exact limits of the state governments, if they encroach upon a necessary federal government, which alone is capable of protecting us against foreign enemies, and a dangerous anarchy? The dispute whether the new government is national or merely federal, is therefore in a great measure equivocal, and has a bad tendency. To a certain degree it is national, because it acts directly on the people, without the intervention of the state governments, in all those cases which are necessary for the general safety and welfare. Indeed, the want of this direct operation, was the principal defect of the old confederacy, as will be seen in the examination of the following amendments.

*Note:* The readers will find the federal constitution, its ratification by Massachusetts, South-Carolina, New-Hampshire, Virginia, and New-York, the address of the minority of Pennsylvania, ditto of Maryland, and the proceedings of the convention of North-Carolina, in Mr. Carey's Museum for Sept. 1787; Feb. and Aug. 1788; Dec. 1787; May and Sept. 1788, respectively.

1. The Hessian fly was a fly that wreaked havoc on cereal crops such as wheat, rye, and barley. A 1786 infestation particularly affected the middle states.

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