



# CENTER FOR THE STUDY OF THE AMERICAN CONSTITUTION

csac.history.wisc.edu > Document Collections > The Creation and Ratification of the Bill of Rights > Serial Essays Related to the Creation and Ratification of the Bill of Rights > Essays by “Foreign Spectator”

## Foreign Spectator XVIII Philadelphia *Federal Gazette*, 30 December 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 XVIII.

The judicial power of the federal government is criticized by various discordant amendments. We shall begin with those that limit its extent. *The judicial power shall extend to all cases in law and equity, arising under treaties, made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other foreign ministers, or consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under grants of different states*—14th and 15th ams. by the conventions of Virginia and North-Carolina respectively. This excludes from the federal jurisdiction, “controversies between a state and citizens of another state, between citizens of different states (except in the case of claiming lands, &c.) and between a state, or the citizens thereof, and foreign states, citizens or subjects,” 3d art. 2d sec. 1st par. *That the judicial power of the United States shall extend to no controversies respecting land, unless it relate to claims of territory or jurisdiction between states, or to claims of land between individuals, or between states and individuals under the grants of different states*, 28th am. by the convention of New-York. This excludes all controversies about land, between the United States and a state or individual, and between individuals and states, or citizens of different states, except claims of the above description. The minority of Pennsylvania, enumerating, in the 14th am. the objects of the federal judiciary power, omits “controversies between the citizens of a state and those of foreign states (public ministers excepted) and between citizens of different states, except when claiming land under grants of different states.”

That the federal judiciary should take cognizance of every controversy, between any of the states and a foreign power, is an axiom in politics. Foreign nations know the United States only as *one nation*, and regard each particular state only as a province of one empire. Had the constitution bereft the federal government of this important power, it would have loosened a principal tie of the union, by laying the several states open to intrigues and wars with foreign nations.

Controversies between a foreign nation and an American citizen are also, with respect to the first party, national affairs, and consequently must be so with regard to the other. Foreign nations view us, not as Pennsylvanians, Virginians, &c. but as citizens of the United States; just as America

regards a Spaniard or a Frenchman, not as inhabitants of Paris and Cadiz, but as subjects of Spain and France, and looks to these governments for satisfaction, if any of their people transgress against the laws of nations, whether a treaty has taken place or not. The propriety of giving the federal judiciary the decision of such causes is therefore evident from the nature of things, and general usage of nations; it was moreover enforced by a regard to the public peace, because powerful ambitious leaders in the frontier-states might otherwise, by trespassing on the neighbouring countries, involve their own state, and eventually the union in contention and bloodshed.

Causes between a state or its citizens and foreign subjects are also in a degree national. When they arise under the laws of the Union, they are undoubtedly proper objects of the federal jurisdiction, which must be co-extensive with federal legislation. If they originate within the sphere of state legislation, plausible doubts may indeed be raised. It may be said, that foreigners are at liberty to deal or not with the people of the several states, as they are more or less pleased with the laws; and that justice will be administered as well in the state courts as by federal judges. But again it merits consideration, that every nation in Europe will most certainly, for many years, place more confidence in the federal government than in those of the states; that we should regard this opinion, if we mean to have a great and beneficial intercourse with them, and to draw large foreign capitals into the channels of our agriculture, commerce and manufactures.

It is certainly reasonable to make the federal judiciary an umpire in controversies between a state and the citizens of another state. Whether a state is plaintiff or defendant, its dignity will not permit subjection to the tribunals of a sister state. Sometimes it may not find justice against a powerful individual in his own state. Again, the pride of state, and anxious regard to personal rights, will certainly not give up a citizen to the judicial power of the other party.

In controversies between citizens of different states, federal courts are also the proper forum, with those limitations that convenience may require.

The distinction between matters of federal and state legislation might again be alledged in both these cases; but as many causes will probably be of a mixed nature, it is best to go by general rules merely to avoid confusion and contention. Besides, as by 2d sect. 4th article, “the citizens of each state shall be entitled to all the privileges and immunities of citizens in the federal<sup>1</sup> states,” the interposition of the federal judiciary seems necessary to carry this provision into execution; otherwise this reciprocal stipulation of the states must ultimately depend on the good disposition of each. This federal arbitration is no doubt promotive of public peace, as without it disagreeable and serious contentions may be fomented between the states by artful and turbulent individuals, or by momentous but dubious questions of personal right. Whether federal justice may always be the best is not the principal question; but to judge from the sad experience of many years it will be preferable to that of some state governments. I mean no reflection on men, but reason only from the natural effects of systems. Is it not acknowledged by every *thinking person*, that *nothing but a general system* can restore a sense of general justice?

The exception against federal jurisdiction in causes respecting lands, appears unsupported by any peculiar arguments; besides, it would be very extensive, as so many claims and titles to lands on the frontiers are yet undecided.

The minority of Pennsylvania desire, that the federal judiciary *shall in criminal cases be confined only to such as are expressly enumerated in the constitution; and that the United States in Congress assembled shall not have power to exact [i.e., enact] laws which shall alter the laws of*

*descents and distributions of the effects of deceased persons, the titles of lands or goods, or the regulation of contracts in the individual states, 14th am.*

Causes of the most important federal consequence may be of a criminal nature: if a party of individuals should by arms, pursue a claim of lands in a neighbouring state, burn houses and commit murders, this case is neither treason against the United States, nor felony on the high seas, nor counterfeiting of the coin, nor offence against the laws of nations (not being an injury to foreigners) yet it is an atrocious breach of public peace. Many actions may, in a similar manner, be either purely criminal or of a mixed quality not easily separable. To disarm the federal power of criminal jurisdiction, when really just and necessary, is a jealousy the more improper as trial of jury is insured in all those cases.

The federal government assumes no power to regulate contracts in the individual states, while they, in conformity to the 10th sect. 1st art. “do not pass any law impairing the obligation of contracts;” nor can it meddle with titles of goods or lands, except in the controversies above-mentioned: even in these possession for a certain term of years will, no doubt, by law, be a valid title. As to laws of descents and distributions of the effects of deceased persons, Congress must, with regard to foreigners, observe treaties, and the general laws of nations.

The conventions of Virginia and North-Carolina in the above 14th & 15th ams. demand, “that the judicial power of the united states shall extend to no case where the cause of action shall have originated before the ratification of this constitution; except in disputes between states about their territory; disputes between persons claiming lands under the grants of different states; and suits for debts due to the United States.” Whatever just demands foreign nations may have on the citizens of any state, by virtue of treaties previous to the ratification of the new constitution; the general government is responsible for their satisfaction, as it has been all the time: no contracts with other powers can be impaired by any change of the constitution; the nation is the party, and its mode of government is in this respect as immaterial as a fashion in dress. But if the subjects of a foreign power have merely by the general laws of nations acquired claims on the citizens of any state, they must look to this for justice, and cannot demand it from the United States, because they had hitherto no constitutional power to enforce compliance with contracts. This state remains however under such obligation in the new confederation, and is liable to prosecution from that foreign power, whose subjects it has injured; nor can it in that case be protected by the union. This event is not indeed very probable. Nevertheless it is necessary for the honour and credit of the federal empire, that all its members should fulfil former engagements.

The reciprocal claims of the states and their citizens cannot be annulled by a change of the constitution. The states might indeed have reserved the right of settling them in the old way; but this not having proved good, the new mode was thought more eligible; and will no doubt, by a proper conduct, give satisfaction to all parties. This expedient is the more reasonable as even by the old constitution “the United States in congress assembled are the last resort, on appeal of all disputes between the states in any cause whatever; and the citizens of each are reciprocally entitled to all immunities and privileges of free citizens.”

1. Both the *Federal Gazette* and the reprinting has “federal,” but in the Constitution the word is “several.”

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. XXXIX: Bill of Rights [3] (Madison, Wis.: Wisconsin Historical Society Press, 2023), 449–53.