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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.*

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Concurrent jurisdiction, between the federal judiciary and those of the states, is proposed in various modes. The conventions of Virginia and North-Carolina, in the above 14th and 15th ams. confine *the judicial power of the United States within the supreme court, and such courts of admiralty as Congress may, from time to time, ordain and establish, in any of the different states*: consequently all actions which do not originate in these must commence in some of the state courts. This is not expressed; but *appellate jurisdiction is given to the supreme court in these cases, to wit, in controversies to which the United States shall be a party, and those between parties claiming lands under the grants of different states.* (As to controversies between a state and the citizens of another state, &c. &c. they are by these conventions entirely excluded from federal jurisdiction.)

The convention of New-York requests, *that the Congress shall not constitute, ordain, or establish any tribunals or inferior courts, with any other than appellate jurisdiction, except such as may be necessary for the trial of causes of admiralty, and maritime jurisdiction, and for the trial of piracies and felonies committed on the high seas; and in all other cases, to which the judicial power of the United States extends, and in which the supreme court of the United States has not original jurisdiction, the causes shall be heard, tried and determined, in some one of the state courts, with the right of appeal to the supreme court of the United States, or other proper tribunal to be established for that purpose, by the Congress, with such exceptions, and under such regulations, as the Congress shall make—24th am.* This takes from the federal judiciary, original jurisdiction in controversies between the United States and individuals, between citizens of different states, between citizens of the same state claiming lands under the grants of different states, and between the citizens of any state and foreign subjects, public ministers excepted—3d art. 2d sec. 1st par.

Every action arising and terminating within the boundaries of federal legislation, is, undoubtedly, a proper object of original federal jurisdiction. If the cognizance of any such is delegated to a state court, it must be under federal commissions. Such delegation should be left to the discretion of Congress. In momentous cases it would be very improper. With all due regard to the integrity and wisdom of the state judges, a uniform interpretation of the national laws could

not be expected from them; some of them, especially those that hold their offices during pleasure, may also, in some causes, or at certain times, be warped by local prejudices. Though appeals would rectify mistakes, yet a frequency of them would be very troublesome, and a reflection upon the state courts ill calculated for cementing the federal union. So many causes of a mixed quality, will be objects of concurrent jurisdiction, that a partition of those wholly federal is not adviseable.

The conventions of Massachusetts and New-Hampshire demand a concurrent jurisdiction only in civil actions between citizens of different states; but with considerable variation. *The supreme judicial federal court shall have no jurisdiction of causes between citizens of different states, unless the matter in dispute, whether it concerns the reality or personality, be of the value of three thousand dollars at least; nor shall the federal judicial powers extend to any actions between citizens of different states, where the matter in dispute, whether it concerns the reality or personality, is not of the value of fifteen hundred dollars, at the least.* Massachusetts, 7th am. *All common law causes between citizens of different states shall be commenced in the common law courts of the respective states, and no appeal shall be allowed to the federal court in such cases, unless the sum or value of the thing in controversy amount to three thousand dollars,* New-Hampshire, 7th am.

The latter amendment would nearly exclude federal jurisdiction from those cases. The first would except the greater number of actions, and many of consequence. While the present happy mediocrity of condition remains, fifteen hundred dollars is a great sum to most people, and, comparatively, few causes may exceed this. Less than three thousand dollars may be the whole substance of many worthy families; so far as there is greater probability of satisfaction at the principal seat of federal justice, it seems hard to deny it. In general, the real value of any specified sums to either party cannot be tolerably ascertained without attention to many circumstances: what to one person is a trifle, may to another be a treasure. The value of specie does also fluctuate with the prices of commodities. It is therefore best to leave such matters to the regulations of Congress.

The minority of Maryland will have it *to be expressly declared, that the state courts have a concurrent jurisdiction with the inferior federal courts in all actions on debts or contracts, and in all other controversies respecting property, with an appeal from either to the supreme court, if the matter in dispute be of the value of — dollars:* 3d am. After this general partition, they still demand, *that the inferior federal courts shall not have jurisdiction of less than — dollars,* excluding also appeal, except *in cases of revenue:* at least this construction is most conformable to the foregoing amendment. An express declaration of this concurrency of jurisdiction would be of no use without an accurate modification. Among other things, it must be determined when the choice of tribunal shall be left to the plaintiff or defendant, lest federal cognizance, in the first instance, should be generally eluded. Probably, controversies in which foreign states or their subjects are parties, may require, in some cases, different treatment from those between the United States and their citizens. The debts, contracts, and actions between these, are also of various kinds. This minority were, themselves, sensible of these difficulties in leaving those blanks. For my part, I am fully persuaded, that if the judicial department of the new constitution was at present to be *delineated* in all its proceedings, an hundred significant blanks must be left; and this very thing would render such enterprize insignificant.

The same minority desire *that Congress may give the state courts jurisdiction of revenue cases for such funds, and in such manner, as they think proper.* 4th am. Without any express stipulation the Congress may do this by virtue of general power given in 3d art. 1st sec. The propriety and method of this expedient must, however, depend on the form and operations of the *federal* revenue system, and on the federal spirit of the states.

An express declaration that the state courts shall have concurrent jurisdiction in all cases of trespasses done within the body of a county, and within the inferior federal jurisdiction, 5th am. is also liable to exceptions in several instances; as insurrections against the federal government, and mal-treatment of its officers; or inroads of parties from neighbouring states, though not acting under public authority.

The avowed intention of this minority by these amendments, is to “prevent the establishment of any inferior federal courts, which, if not numerous, will be inconvenient, and if numerous, very expensive; to prevent an extension of the federal jurisdiction, which may, and in all probability will, swallow up the state jurisdictions, and consequently, sap those rules of descent and regulations of personal property, by which men hold their estates; and to secure the independence of the federal judges, to whom the happiness of the people of this great continent will be so greatly committed by the extensive powers assigned them.”

As the federal judges will be independent, lessening of employ could little affect their interest, though it might their honour; but a sense of this would be weak in men capable of twisting the laws into nets for the public liberty. This jealousy is however ill founded. If a federal judge must be an enemy to state jurisdiction, a state judge is necessarily a foe to the national government. The real truth is, that both will, as men of sense and integrity, support the federal constitution without encroachment on the states, or individuals, and that an occasional partiality in either may only serve to preserve the equilibrium. That the federal jurisdiction will swallow up the state jurisdiction, supposes first an abolition of the state governments by the federal constitution. They have besides different grounds, and where they unavoidably mix, the Congress can establish an amicable co-operation. Why should we apprehend a partiality from this legislature, which represents both the whole federal people and the states?

The assertion that the federal jurisdiction may sap the very foundations of personal property is too extravagant, even supposing a coalition into one simple state. Those inferior courts need not be very numerous if the judges perform regular circuits; the business itself cannot require it: the apprehension of many in every state is frivolous.

The federal constitution has framed the judicial power in a few lines, yet I presume sufficient for the present exigency. “It shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish.” In all cases of which the supreme court has not original cognizance, “it shall have appellate jurisdiction, with such exceptions and such regulations as the Congress shall make,” 3d art. 1st and 2d sect. Congress may therefore confine all proper causes to the inferior courts. Three or four among these may be invested with appellate jurisdiction for the trial of causes which may be above the common courts. The present clamour against forcing appeals to the supreme court, from the extremities of the continent, is therefore unreasonable. Causes of a mixed quality may be left to the common state courts with appeal to the federal courts. This may in many cases be expedient, and an equitable division of power—smaller matters may also be entirely left to the state courts, especially if they have more

of the state, than federal complexion. If public utility should in any case render it necessary to give the state courts cognizance of causes wholly federal, they are then, so far, ordained by Congress as federal courts.

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