

WEEK FOUR

THE CONSTITUTION ON TRIAL

The Proposed Constitution and Its Critics, Autumn 1787

THE FOUNDING DEBATE READING GROUP

Summer 2026

Selected and edited by Mason Melead

This reader is in three parts. The first is the Constitution as the Federal Convention sent it out on the seventeenth of September 1787, printed entire and before any of its critics are heard. The second is the case against it, as three writers made it in the five weeks that followed: Brutus complete, and the Federal Farmer and Centinel abridged, so that the week's argument may be read in a sitting. The third is a supplement of optional readings, giving those two writers in full; where the core abridges a text, a bracketed note says what has been passed over. All are public-domain texts. Spelling, punctuation, and capitalization are those of the copy-texts; emphatic full capitals are rendered in small capitals. The Constitution follows the National Archives transcription of the engrossed parchment. Brutus follows the text printed in the New-York Journal. For the Federal Farmer and Centinel the copy-texts are the 1888 reprints of the original pamphlet and newspaper—Ford's Pamphlets on the Constitution of the United States and McMaster and Stone's Pennsylvania and the Federal Constitution—which preserve the eighteenth-century pointing and spelling that the standard modern edition normalizes; that edition, Storing's Complete Anti-Federalist, has been collated against them throughout, and where the two disagree in wording its reading has been adopted.

This reader was selected, introduced, and typeset by Mason Melead for the Founding Debate Reading Group. masonmelead.com

INTRODUCTION

On the seventeenth of September 1787 the Federal Convention finished its work, and the delegates who were willing to sign came forward and signed. Then they went home, and the thing they had made ceased to be their business and became everyone's. What they had produced was a piece of paper with no legal force whatever: a proposal, drafted by fifty-five men behind closed doors, that thirteen sovereign states should dissolve the government they had and replace it with another. Nothing about it was yet settled. The delegates themselves were divided—three of those present at the end refused to sign—and the men who now had to be persuaded were not delegates at all but the freeholders of thirteen separate polities, most of whom would form their opinion of the document from what they read in a newspaper or heard at a tavern.

The Convention had also, in its last article, arranged the terms of its own trial. The Articles of Confederation could be amended only by the unanimous consent of the thirteen state legislatures. The seventh article of the new plan provided instead that ratification by conventions in nine states would suffice to establish it “between the States so ratifying”—which is to say that the Constitution proposed to come into force over the objection of as many as four states, and to bypass the legislatures whose powers it meant to reduce by appealing directly to conventions elected for the purpose. Whether this was a lawful mode of amendment or a coup conducted by pamphlet was itself among the questions in dispute. What is certain is that it worked: within three months Delaware, Pennsylvania, and New Jersey had ratified, and within nine the ninth state had.

The argument in between was conducted in a medium the eighteenth century had made peculiarly its own. There were no parties and

no national press; there were perhaps a hundred newspapers, most of them weeklies of four pages, and printers willing to sell space to anyone with an opinion and a pseudonym. Into this the whole controversy poured. Essays signed Brutus, Centinel, Cato, the Federal Farmer, Publius, and An Old Whig were written, printed, reprinted in other cities, and answered, at a pace that would tax a modern newsroom—the first *Federalist* appeared nine days after the first Brutus, and Publius would produce eighty-four more in eight months. What survives is therefore not a set of position papers but the transcript of a public deliberation, conducted at speed, by people who did not know how it would come out.

We call one side Federalists and the other Anti-Federalists, and both names mislead. The men who wanted a stronger central government took the word “federal” for themselves, though the older meaning of federal was precisely the loose league of states they proposed to abandon; their opponents, who thought themselves the true federalists, were left with a name that describes them only by negation. In fact the writers gathered here are for a great deal: for representation dense enough that a farmer might know the man who taxes him, for juries in civil as well as criminal causes, for a press whose liberty is written down and not merely assumed, for legislatures small enough to be watched and short enough in tenure to be replaced. What they doubt is whether any of these things can survive at continental scale. The question is not whether America should be governed but how far a government can be stretched before the word “republic” stops meaning anything.

The readings are arranged to let that argument arrive in its proper order. Part I is the Constitution, entire, and it should be read first and read as the pamphleteers read it—not as the settled frame of the American state, familiar and half-sacred, but as a proposal fresh from Philadelphia whose consequences are unknown. Read at a sitting it has a quality that the piecemeal familiarity of later life obscures: a single sentence of the eighth section of the first article confers the taxing power, another the authority to raise armies, and a third the right to make all laws “necessary and proper” for carrying the rest into effect. Notice also what it does not do. It contains no declaration of rights; it secures trial

by jury in criminal prosecutions and says nothing of civil causes; it never uses the word slave and three times provides for slavery; and in its sixth article it makes federal law supreme over the constitutions of the states, binding their own judges to prefer it. Ask, as you read, what a suspicious reader would fasten upon. Then read the critics in Part II and see how much of it you found.

They are three, and they argue in three registers. Brutus—writing in the *New-York Journal*, probably in the person of Robert Yates, who had walked out of the Convention in July—makes the argument of principle: that this is not a confederation but a consolidated government over individuals, that two sovereignties cannot share one ground, and that a free republic cannot be extended over a territory so vast and a people so various. The Federal Farmer argues as a moderate who grants that some federal government is necessary, and in the letter printed here he does what none of the others attempt: he counts the seats, measures them against the population, and concludes that the natural aristocracy of every district will fill them. Centinel argues in the register of the popular press, and the difference in temperature is instructive—his letter is not a treatise but an alarm, charging that the plan is the work of an aristocracy of wealth and talent and that the reverence owed to Washington and Franklin has been borrowed to carry it.

Last week the documents showed why the Confederation failed, and the Convention's answer to that failure. This week the answer is put on trial. The critics gathered here lost, and it is worth saying plainly that they lost on the merits as well as on the votes—the government they feared has proved more durable and less tyrannical than they predicted. But they did not lose entirely. The Bill of Rights exists because they insisted on it; the arguments they made about representation, standing armies, the reach of federal courts, and the distance between the governed and their governors have never stopped being made; and the objection that a republic cannot be extended indefinitely without ceasing to be one is not obviously answered even now. Read them, then, not as the losing side of a settled question, but as the first Americans to ask what the Constitution would actually do to them—and judge for yourself how much they got right.

A TIMELINE OF THE RATIFICATION CONTEST

The documents in this volume belong to the autumn of 1787, the first weeks of a debate that would run for three years. The later dates are given so that the reader may see where the argument was going while these pamphlets were being written.

17 Sept. 1787	●	THE CONSTITUTION SIGNED Thirty-nine delegates subscribe; Randolph, Mason, and Gerry refuse. The Convention sends the plan to Congress, which forwards it to the states without recommendation.
Oct. 1787	●	THE DEBATE OPENS Pennsylvania's assembly calls a ratifying convention in haste. Centinel's first letter appears on the fifth, the Federal Farmer's pamphlet in the same week, and the first Brutus on the eighteenth.
27 Oct. 1787	●	PUBLIUS REPLIES The first <i>Federalist</i> appears in New York, nine days after Brutus. Eighty-five will follow in eight months.
Dec.–Jan.	●	THE FIRST RATIFICATIONS Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut ratify—the small states quickly, and Pennsylvania over a bitter minority protest.
Feb.–June 1788	●	THE CONTEST DECIDED Massachusetts ratifies with proposed amendments, setting the pattern others follow. On the twenty-first of June New Hampshire becomes

the ninth state, and the Constitution takes effect.

June–July 1788

VIRGINIA AND NEW YORK

The two great doubtful states ratify narrowly, after Madison answers Henry at Richmond and Hamilton outlasts a hostile majority at Poughkeepsie. North Carolina and Rhode Island hold out until 1789 and 1790.

1791

THE AMENDMENTS

Ten amendments, drafted by Madison out of the state conventions' demands, are ratified—the price the critics in this volume exacted for their defeat.

PART I

THE PROPOSED CONSTITUTION

The document as the Convention sent it out on the seventeenth of September 1787, entire and unamended, printed here before any of its critics are heard. Read it first, and read it as a proposal.

CONSTITUTION OF THE UNITED STATES

Framed by the Federal Convention

SIGNED 17 SEPTEMBER 1787

The document that follows is not yet law. On the seventeenth of September 1787 thirty-nine of the delegates at Philadelphia subscribed their names to it; three who remained to the end refused, and others had gone home rather than sign. What the Convention sent out was therefore a proposal, and one made in defiance of its own instructions: Congress had authorized a meeting for the sole purpose of revising the Articles of Confederation, and the Convention had instead written a new frame of government and provided, in the seventh article, that nine ratifying states would put it into effect among themselves. The old union required the assent of all thirteen to alter a comma. The new one proposed to begin without the assent of four.

Read it, therefore, as the American public first read it in the autumn of 1787—as an argument, not as a settled inheritance. It is a short document, and the reader who comes to it after the Articles of Confederation will be struck less by its length than by its verbs. Congress is no longer to requisition but to lay and collect; no longer to recommend but to make law that binds; and the judges in every state, by the sixth article, are bound by that law whatever their own constitutions say. Attend particularly to the eighth section of the first article, which the critics in this volume attack almost to a man—the taxing power, the standing army, and the clause permitting Congress to make all laws “necessary and proper” for executing its powers. Attend also to what is absent. There is no bill of rights; the jury is guaranteed in criminal but not in civil causes; and the word “slave” appears nowhere, though three clauses provide for the thing.

The text here is the National Archives transcription of the engrossed parchment, and it keeps that document’s spelling, capitalization, and punctuation. Article and section numbers are as the Convention set them down.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

SECTION 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every

thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Govern-

ment of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without

the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

SECTION 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the

Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said

Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

SECTION 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and 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;— between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

SECTION 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION 3

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be

so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,

any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

The Word, “the,” being interlined between the seventh and eighth Lines of the first Page, The Word “Thirty” being partly written on an Erasure in the fifteenth Line of the first Page, The Words “is tried” being interlined between the thirty second and thirty third Lines of the first Page and the Word “the” being interlined between the forty third and forty fourth Lines of the second Page.

Attest William Jackson Secretary

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

G°. WASHINGTON
PRESIDT AND DEPUTY FROM VIRGINIA

CONSTITUTION OF THE UNITED STATES

DELAWARE

Geo: Read

Gunning Bedford jun

John Dickinson

Richard Bassett

Jaco: Broom

MARYLAND

James McHenry

Dan of St Thos. Jenifer

Danl. Carroll

VIRGINIA

John Blair

James Madison Jr.

NORTH CAROLINA

Wm. Blount

Richd. Dobbs Spaight

Hu Williamson

SOUTH CAROLINA

J. Rutledge

Charles Cotesworth Pinckney

Charles Pinckney

Pierce Butler

GEORGIA

William Few

Abr Baldwin

NEW HAMPSHIRE

John Langdon

Nicholas Gilman

MASSACHUSETTS

Nathaniel Gorham

Rufus King

CONNECTICUT

Wm. Saml. Johnson

Roger Sherman

NEW YORK

Alexander Hamilton

NEW JERSEY
Wil: Livingston
David Brearley
Wm. Paterson
Jona: Dayton

PENNSYLVANIA
B Franklin
Thomas Mifflin
Robt. Morris
Geo. Clymer
Thos. FitzSimons
Jared Ingersoll
James Wilson
Gouv Morris

PART II

THE ANTI-FEDERALIST CASE

Three answers from the autumn of 1787, in three registers:
Brutus on the extended republic, the Federal Farmer on
representation and the nature of the union, and Centinel
on aristocracy and consolidated power. All were written
within five weeks of the signing, by men who did not know
they would lose.

BRUTUS, No. I

Brutus

THE NEW-YORK JOURNAL · 18 OCTOBER 1787

Within a month of the Convention's adjournment the newspapers of New York had become the chief battleground of the ratification contest, and on the eighteenth of October the *New-York Journal* printed the first of sixteen essays signed "Brutus." Their author has never been established with certainty; the strongest case is for Robert Yates, a judge of the New York supreme court who had sat in the Convention as a delegate and left it in July rather than assist in what he took to be the destruction of the state governments. Whoever held the pen, the essays were the most formidable opposition the Constitution met, and they drew Hamilton, Madison, and Jay into the reply we know as *The Federalist*.

This first essay states the case that the whole series elaborates, and it is worth reading slowly, because its argument is structural rather than partisan. Brutus does not begin by objecting to particular clauses; he begins by asking what kind of thing the proposed government is. His answer is that it is not a confederation of states at all but a government over individuals, and he rests that reading on three provisions—the power to tax, the power to raise armies, and the supremacy clause, together with the authority to make all laws "necessary and proper" for carrying the rest into effect. From these he concludes that the state governments must in time become ornamental, since two sovereignties cannot occupy the same ground.

The essay's second half is the argument that would occupy the next year of American political thought: that a free republic cannot be extended over a great territory and a numerous, various people. Brutus takes the proposition from Montesquieu, but the reasoning he builds on it is his own—that representation loses its meaning as the represented multiply, that laws obeyed from affection in a small state must be enforced by arms in a large one, and that a people too dispersed to know its own mind cannot watch its rulers. Madison would answer this directly in the tenth *Federalist*, and the reader who takes up that essay next week should have Brutus's version of the question fresh in mind.

The text is that printed in the *New-York Journal*, with its spelling and pointing preserved.

TO THE CITIZENS OF THE STATE OF NEW-YORK.

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result.

In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United States are held together, and the want of sufficient energy in our present confederation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to your acceptance, be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favoured land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and

the golden age be, in some measure, realised. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty — if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining assylum for liberty will be shut up, and posterity will execrate your memory.

Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment. It is insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is said, they can be best amended when they are experienced. But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.

With these few introductory remarks, I shall proceed to a consideration of this constitution:

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only?

This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared “that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers,

and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof.” And by the 6th article, it is declared “that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or law of any state to the contrary notwithstanding.” It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States. — The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance — there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises; — there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation: but this is no restriction of

the power at all, for by this clause they are to be applied to pay the debts and provide for the common defence and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defence, and they only are to determine what is for the general welfare; this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only [is] the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late [state?] governments, on this article of raising money. No state can emit paper money — lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States: the only mean therefore left, for any state to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct taxes, when the foederal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government.

It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their

controul over the militia, tend, not only to a consolidation of the government, but the destruction of liberty. — I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity arising under the constitution. One inferior court must be established, I presume, in each state, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be *necessary and proper*, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and indefinite, and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislatures. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the

contrary notwithstanding. — By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.

It is not meant, by stating this case, to insinuate that the constitution would warrant a law of this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal legislature would be more likely to pass the limits assigned them by the constitution, than that of an individual state, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, *proper and necessary*, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so

framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two. The one is the baron de Montesquieu, spirit of laws, chap. xvi. vol. I [book VIII]. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected." Of the same opinion is the marquis Beccarari.

History furnishes no example of a free republic, any thing like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In

every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogenous and discordant principles, as would constantly be contending with each other.

The laws cannot be executed in a republic, of an extent equal to that of the United States, with promptitude.

The magistrates in every government must be supported in the execution of the laws, either by an armed force, maintained at the public expence for that purpose; or by the people turning out to aid the magistrate upon his command, in case of resistance.

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic. In England, where they depend upon the parliament for their annual support, they have always been complained of as oppressive and unconstitutional, and are seldom employed in executing of the laws; never except on extraordinary occasions, and then under the direction of a civil magistrate.

A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government

is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people.“ Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey: but, where this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New-Hampshire would not know one another’s mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass. Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet — a government of all others the most to be dreaded.

In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United-States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.

These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to it, which are so material and fundamental, that they ought to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen while I state these objections — they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There

are many objections, of small moment, of which I shall take no notice — perfection is not to be expected in any thing that is the production of man — and if I did not in my conscience believe that this scheme was defective in the fundamental principles — in the foundation upon which a free and equal government must rest — I would hold my peace.

BRUTUS.

FROM THE THIRD LETTER OF THE FEDERAL FARMER

The Federal Farmer

10 OCTOBER 1787

Three weeks after the Convention rose, a pamphlet appeared in New York under the title *Observations leading to a fair examination of the system of government proposed by the late convention*, addressed in a series of letters from “the Federal Farmer” to “the Republican.” It ran through four editions within a few months. Its author was long taken to be Richard Henry Lee of Virginia, who had opposed the Constitution in Congress; more recent scholarship favors Melancton Smith of New York. Whoever wrote them, the letters are the most temperate of the attacks on the Constitution, and the most useful for that reason: their author concedes at the outset that a federal government of some sort is necessary, that the Convention was composed of respectable men, and that he is himself a friend to property and to the steady execution of the laws. His quarrel is with the plan, not the enterprise.

Printed here is the opening of the third letter, on representation. It does something none of the other critics attempt: it counts. So many inhabitants, so many seats, so many men who will realistically be chosen—and from those numbers the Farmer concludes that the natural aristocracy of every district will fill the new government, and that the yeomanry, the middling men who are the bulk of the country, will have no voice they can call their own. Read it alongside Brutus’s argument from Montesquieu and notice that the two men reach the same objection by wholly different roads: one from the nature of an extended republic, the other from arithmetic.

The three letters entire—on the kind of union proposed, on the purse and the sword, and on the taxing power and the federal courts—appear in the supplement.

OCTOBER 10TH, 1787.

DEAR SIR,

The great object of a free people must be so to form their government and laws, and so to administer them, as to create a confidence in, and respect for the laws; and thereby induce the sensible and virtuous part of the community to declare in favor of the laws, and to support them without an expensive military force. I wish, though I confess I have not much hope, that this may be the case with the laws of congress under the new constitution. I am fully convinced that we must organize the national government on different principles, and make the parts of it more efficient, and secure in it more effectually the different interests in the community; or else Leave in the state governments some powers proposed to be lodged in it—at least till such an organization shall be found to be practicable. Not sanguine in my expectations of a good federal administration, and satisfied, as I am, of the impracticability of consolidating the states, and at the same time of preserving the rights of the people at large, I believe we ought still to leave some of those powers in the state governments, in which the people, in fact, will still be represented—to define some other powers proposed to be vested in the general government, more carefully, and to establish a few principles to secure a proper exercise of the powers given it. It is not my object to multiply objections, or to contend about inconsiderable powers or amendments. I wish the system adopted with a few alterations; but those, in my mind, are essential ones; if adopted without, every good citizen will acquiesce, though I shall consider the duration of our governments, and the liberties of this people, very much dependant on the administration of the general government. A wise and honest administration, may make the people happy under any government; but necessity only can justify even our leaving open avenues to the abuse of power, by wicked, unthinking, or ambitious men, I will examine, first, the organization of the proposed government, in order to judge; 2d, with propriety, what powers are improperly, at least prematurely lodged in it. I shall examine, 3d, the undefined powers; and 4th, those powers, the exercise of which is not secured on safe and proper ground.

First. As to the organization the house of representatives, the democratic branch, as it is called, is to consist of 65 members: that is, about one representative for fifty thousand inhabitants, to be chosen biennially the federal legislature may increase this number to one for each thirty thousand inhabitants, abating fractional numbers in each state. Thirty three representatives will make a quorum for doing business, and a majority of those present determine the sense of the house. I have no idea that the interests, feelings, and opinions of three or four millions of people, especially touching internal taxation, can be collected in such a house. In the nature of things, nine times in ten, men of the elevated classes in the community only can be chosen Connecticut, for instance, will have five representatives not one man in a hundred of those who form the democratic branch in the state legislature, will, on a fair computation, be one of the five.—The people of this country, in one sense, may all be democratic; but if we make the proper distinction between the few men of wealth and abilities, and consider them, as we ought, as the natural aristocracy of the country, and the great body of the people, the middle and lower classes, as the democracy, this federal representative branch will have but very little democracy in it, even this small representation is not secured on proper principles. The branches of the legislature are essential parts of the fundamental compact, and ought to be so fixed by the people, that the legislature cannot alter itself by modifying the elections of its own members. This, by a part of Art. i, Sect. 4, the general legislature may do, it may evidently so regulate elections as to secure the choice of any particular description of men. It may make the whole state one district—make the capital, or any places in the state, the place or places of election—it may declare that the five men (or whatever the number may be the state may chuse) who shall have the most votes shall be considered as chosen. In this case it is easy to perceive how the people who live scattered in the inland towns will bestow their votes on different men—and how a few men in a city, in any order or profession, may unite and place any five men they please highest among those that may be voted for and all this may be done constitutionally, and by those silent operations, which are not immediately perceived by the people in general. I know it is urged, that the general legislature will be disposed to regulate elections on fair and just principles: This may be true—good men will

generally govern well with almost any constitution: but why in laying the foundation of the social system, need we unnecessarily leave a door open to improper regulations?—This is a very general and unguarded clause, and many evils may flow from that part which authorises the congress to regulate elections. Were it omitted, the regulations of elections would be solely in the respective states, where the people are substantially represented; and where the elections ought to be regulated, otherwise to secure a representation from all parts of the community, in making the constitutions, we ought to provide for dividing each state into a proper number of districts, and for confining the electors in each district to the choice of some men, who shall have a permanent interest and residence in it; and also for this essential object, that the representative elected shall have a majority of the votes of those electors who shall attend and give their votes.

In considering the practicability of having a full and equal representation of the people from all parts of the union, not only distances and different opinions, customs and views, common in extensive tracts of country, are to be taken into view but many differences peculiar to Eastern, Middle, and Southern States. These differences are not so perceivable among the members of congress, and men of general information in the states, as among the men who would properly form the democratic branch. The Eastern states are very democratic, and composed chiefly of moderate freeholders; they have but few rich men and no slaves; the Southern states are composed chiefly of rich planters and slaves; they have but few moderate freeholders, and the prevailing influence, in them is generally a dissipated aristocracy: The Middle states partake partly of the Eastern and partly of the Southern character.

Perhaps, nothing could be more disjointed, unweildly and incompetent to doing business with harmony and dispatch, than a federal house of representatives properly numerous for the great objects of taxation, &c. collected from the several states; whether such men would ever act in concert; whether they would not worry along a few years, and then be the means of separating the parts of the union, is very problematical? View this system in whatever form we can, propriety brings us still to this point, a federal government possessed of general and complete powers, as

to those national objects which cannot well come under the cognizance of the internal laws of the respective states, and this federal government, accordingly, consisting of branches not very numerous.

[The Farmer turns to the senate, the vice-president, and the judicial power, and then returns to the size of the house:]

The convention found that any but a small house of representatives would be expensive, and that it would be impracticable to assemble a large number of representatives. Not only the determination of the convention in this case, but the situation of the states, proves the impracticability of collecting, in any one point, a proper representation.

The formation of the senate, and the smallness of the house, being, therefore, the result of our situation, and the actual state of things, the evils which may attend the exercise of many powers in this national government may be considered as without a remedy.

[He considers impeachment, which lies before the senate only, and goes on:]

Impressed, as I am, with a sense of the difficulties there are in the way of forming the parts of a federal government on proper principles, and seeing a government so unsubstantially organized, after so arduous an attempt has been made, I am led to believe, that powers ought to be given to it with great care and caution.

[The letter continues, on the taxing power and the federal courts, in the supplement.]

FROM CENTINEL, No. I

Centinel

THE INDEPENDENT GAZETTEER · 5 OCTOBER 1787

Pennsylvania moved first and moved fast. The Convention had barely adjourned when the state's assembly, with the opposition members physically dragged into the chamber to make a quorum, called a ratifying convention for November. Philadelphia was the seat of the federal Convention and the stronghold of its friends, and the celebrations there were loud enough to persuade many that the question was already settled. It was into that atmosphere that "Centinel" published this letter in Eleazer Oswald's *Independent Gazetteer* on the fifth of October, less than three weeks after the Constitution was signed. The author was almost certainly Samuel Bryan, son of a judge of the state supreme court, though the secret was kept at the time.

Centinel's voice is unlike the others in this volume. Where the Federal Farmer reasons and Brutus argues from principle, Centinel accuses—and he begins by naming names. The two men in whom America has the highest confidence, he says without quite saying it, have been imposed upon: Washington by his inexperience in such matters, Franklin by the weakness and indecision of old age. It was a bold thing to print, and it tells the reader something about how high the stakes were reckoned to be.

The passages printed here are the opening, on the liberties a Pennsylvanian already holds and stands to surrender; the charge that the plan is the work of an aristocracy of wealth and talent; the consequences Centinel draws from the taxing power and the supremacy of federal law; and his closing objection to being hurried. Note where he places the liberty of the press: not among the amenities of a free state, but as the instrument by which everything else is defended, and the one thing the Convention passed over in silence. His longer critique of balanced government—that three co-equal branches cannot in fact check one another, and only obscure who is to blame—is in the complete letter, which appears in the supplement.

Where the original set words in full capitals for emphasis, they are given here in small capitals.

Mr. Oswald: As the Independent Gazetteer seems free for the discussion of all public matters, I expect you will give the following a place in your next.

TO THE FREEMEN OF PENNSYLVANIA.

FRIENDS, COUNTRYMEN AND FELLOW CITIZENS.

Permit one of yourselves to put you in mind of certain liberties and privileges secured to you by the constitution of this commonwealth, and to beg your serious attention to his uninterested opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government secures to you a right to hold yourselves, houses, papers and possessions free from search and seizure, and therefore warrants granted without oaths or affirmations first made, affording sufficient foundations for them, whereby any officer or messenger may be commanded or required to search your houses or seize your persons or property not particularly described in such warrant, shall not be granted. Your constitution further provides “that in controversies respecting property, and in suits between man and man, the parties have a right to trial by jury, which ought to be held sacred.” It also provides and declares, “that the people have a right of FREEDOM OF SPEECH, and of writing and PUBLISHING their sentiments, therefore THE FREEDOM OF THE PRESS OUGHT NOT TO BE RESTRAINED.” The constitution of Pennsylvania is yet in existence, as yet you have the right to freedom of speech, and of publishing your sentiments. How long those rights will appertain to you, you yourselves are called upon to say; whether your houses shall continue to be your castles, whether your papers, your persons and your property, are to be held sacred and free from general warrants, you are now to determine. Whether the trial by jury is to continue as your birth-right, the freemen of Pennsylvania, nay, of all America, are now called upon to declare.

Without presuming upon my own judgment, I cannot think it an unwarrantable presumption to offer my private opinion, and call upon others for theirs; and if I use my pen with the boldness of a freeman, it is

because I know that the liberty of the press yet remains unviolated and juries yet are judges.

The late Convention have submitted to your consideration a plan of a new federal government. The subject is highly interesting to your future welfare. Whether it be calculated to promote the great ends of civil society, viz., the happiness and prosperity of the community, it behoves you well to consider, uninfluenced by the authority of names. Instead of that frenzy of enthusiasm, that has actuated the citizens of Philadelphia, in their approbation of the proposed plan, before it was possible that it could be the result of a rational investigation into its principles, it ought to be dispassionately and deliberately examined on its own intrinsic merit, the only criterion of your patronage. If ever free and unbiased discussion was proper or necessary, it is on such an occasion. All the blessings of liberty and the dearest privileges of freemen are now at stake and dependent on your present conduct. Those who are competent to the task of developing the principles of government, ought to be encouraged to come forward, and thereby the better enable the people to make a proper judgment; for the science of government is so abstruse, that few are able to judge for themselves. Without such assistance the people are too apt to yield an implicit assent to the opinions of those characters whose abilities are held in the highest esteem, and to those in whose integrity and patriotism they can confide; not considering that the love of domination is generally in proportion to talents, abilities and superior acquirements, and that the men of the greatest purity of intention may be made instruments of despotism in the hands of the artful and designing. If it were not for the stability and attachment which time and habit gives to forms of government, it would be in the power of the enlightened and aspiring few, if they should combine, at any time to destroy the best establishments, and even make the people the instruments of their own subjugation. The late revolution having effaced in a great measure all former habits, and the present institutions are so recent, that there exists not that great reluctance to innovation, so remarkable in old communities, and which accords with reason, for the most comprehensive mind cannot foresee the full operation of material changes on civil polity; it is the genius of the common law to

resist innovation. The wealthy and ambitious, who in every community think they have a right to lord it over their fellow creatures, have availed themselves very successfully of this favorable disposition; for the people thus unsettled in their sentiments, have been prepared to accede to any extreme of government. All the distresses and difficulties they experience, proceeding from various causes, have been ascribed to the impotency of the present confederation, and thence they have been led to expect full relief from the adoption of the proposed system of government; and in the other event, immediately ruin and annihilation as a nation. These characters flatter themselves that they have lulled all distrust and jealousy of their new plan, by gaining the concurrence of the two men in whom America has the highest confidence, and now triumphantly exult in the completion of their long meditated schemes of power and aggrandizement. I would be very far from insinuating that the two illustrious personages alluded to, have not the welfare of their country at heart; but that the unsuspecting goodness and zeal of the one has been imposed on, in a subject of which he must be necessarily inexperienced, from his other arduous engagements; and that the weakness and indecision attendant on old age, has been practiced on in the other.

[Centinel argues at length that three co-equal branches cannot balance one another, and that a single legislature, annually elected, is the only frame a people can hold to account. He then examines the powers the plan would confer:]

By these sections the all-prevailing power of taxation, and such extensive legislative and judicial powers are vested in the general government, as must in their operation necessarily absorb the State legislatures and judiciaries; and that such was in the contemplation of the framers of it, will appear from the provision made for such event, in another part of it (but that, fearful of alarming the people by so great an innovation, they have suffered the forms of the separate governments to remain, as a blind). By Article 1st, sect. 4th, "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing senators." The plain construction of which is, that when the State legislatures drop out of sight, from the necessary operation of this government, then Congress

are to provide for the election and appointment of representatives and senators.

[He traces the same consolidating tendency through the organization of the two houses and the presidency, and closes:]

And it is worthy of remark that there is no declaration of personal rights, premised in most free constitutions; and that trial by jury in civil cases is taken away; for what other construction can be put on the following, viz: Article 3d, sect. 2d, "In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases above mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact." It would be a novelty in jurisprudence, as well as evidently improper, to allow an appeal from the verdict of a jury, on the matter of fact; therefore it implies and allows of a dismissal of the jury in civil cases, and especially when it is considered, that jury trial in criminal cases is expressly stipulated for, but not in civil cases.

But our situation is represented to be so critically dreadful, that, however reprehensible and exceptionable the proposed plan of government may be, there is no alternative between the adoption of it and absolute ruin.

My fellow citizens, things are not at that crisis; it is the argument of tyrants; the present distracted state of Europe secures us from injury on that quarter, and as to domestic dissensions, we have not so much to fear from them, as to precipitate us into this form of government, without it is a safe and a proper one. For remember, of all possible evils, that of despotism is the worst and the most to be dreaded.

[Centinel ends with a warning against haste, and with four lines from *Julius Caesar*; the whole letter is in the supplement.]

SUPPLEMENTAL READINGS

Optional

The two documents that follow are printed here in full: all three letters of the Federal Farmer, on the kind of union proposed, on the purse and the sword, and on representation, taxation, and the federal courts; and the whole of Centinel's first letter, including his critique of balanced government and his close. They are offered for those who wish to read further; the core of this week's reading is complete without them.

LETTERS FROM THE FEDERAL FARMER

The Federal Farmer

8, 9, AND 10 OCTOBER 1787

Three weeks after the Convention rose, a pamphlet appeared in New York under the title *Observations leading to a fair examination of the system of government proposed by the late convention*, addressed in a series of letters from “the Federal Farmer” to “the Republican.” It went through four editions and several thousand copies within a few months—by the standards of the day, a great success—and Timothy Pickering thought it worth a long published reply. Its author was long taken to be Richard Henry Lee of Virginia, who had opposed the Constitution in Congress; more recent scholarship favors Melancton Smith of New York. The first three letters, printed here, are the opening of the case.

The Federal Farmer is the most temperate of the writers in this volume, and the most useful for that reason. He concedes at the outset that a federal government of some sort is necessary, that the Convention was composed of respectable men, and that he is himself a friend to property and to the steady execution of the laws. His quarrel is not with the enterprise but with the plan, and he begins by insisting on a distinction the debate would otherwise have blurred: there are three things one might mean by a union—separate republics under a federal head, one consolidated government, or a partial consolidation—and the proposed constitution is the third, though its friends describe it as the first and its enemies as the second.

From that distinction the argument proceeds. In the second letter he asks what powers are actually lodged in the new government, and answers that the purse and the sword together are enough, whatever is said of the states’ reserved authority. In the third he turns to representation, and here the reader should slow down: he counts the seats, measures them against the population, and asks who will in practice be elected—concluding that the natural aristocracy of any district will fill them, and that the yeomanry, the middling men who make up the bulk of the country, will have no voice of their own. It is the same objection Brutus raises, but reached by arithmetic rather than by Montesquieu.

The copy-text is Paul Leicester Ford's 1888 reprint of the original pamphlet, which preserves the author's dashes and his eighteenth-century spelling—*compleat*, *behoves*, *sovereignty*, *endeavoured*.

LETTER I

OCTOBER 8TH, 1787.

DEAR SIR,

My letters to you last winter, on the subject of a well balanced national government for the United States, were the result of a free enquiry; when I passed from that subject to enquiries relative to our commerce, revenues, past administration, &c. I anticipated the anxieties I feel, on carefully examining the plan of government proposed by the convention. It appears to be a plan retaining some federal features; but to be the first important step, and to aim strongly at one consolidated government of the United States. It leaves the powers of government, and the representation of the people, so unnaturally divided between the general and state governments, that the operations of our system must be very uncertain. My uniform federal attachments, and the interest I have in the protection of property, and a steady execution of the laws, will convince you, that, if I am under any bias at all, it is in favor of any general system which shall promise those advantages. The instability of our laws increases my wishes for firm and steady government; but then, I can consent to no government, which, in my opinion, is not calculated equally to preserve the rights of all orders of men in the community. My object has been to join with those who have endeavoured to supply the defects in the forms of our governments by a steady and proper administration of them. Though I have long apprehended that fraudulent debtors, and embarrassed men, on the one hand, and men, on the other, unfriendly to republican equality, would produce an uneasiness among the people, and prepare the way, not for cool and deliberate reforms in the governments, but for changes calculated to promote the interests of particular orders of men. Acquit me, sir, of any agency in the formation of the new system; I shall be satisfied

with seeing, if it shall be adopted with a prudent administration. Indeed I am so much convinced of the truth of Pope's maxim, that "That which is best administered is best," that I am much inclined to subscribe to it from experience. I am not disposed to unreasonably contend about forms. I know our situation is critical, and it behoves us to make the best of it. A federal government of some sort is necessary. We have suffered the present to languish; and whether the confederation was capable or not originally of answering any valuable purposes, it is now but of little importance. I will pass by the men, and states, who have been particularly instrumental in preparing the way for a change, and perhaps, for governments not very favourable to the people at large. A constitution is now presented which we may reject, or which we may accept with or without amendments, and to which point we ought to direct our exertions is the question. To determine this question with propriety; we must attentively examine the system itself, and the probable consequences of either step. This I shall endeavour to do, so far as I am able, with candor and fairness; and leave you to decide upon the propriety of my opinions, the weight of my reasons, and how far my conclusions are well drawn. Whatever may be the conduct of others, on the present occasion, I do not mean hastily and positively to decide on the merits of the constitution proposed. I shall be open to conviction and always disposed to adopt that which, all things considered, shall appear to me to be most for the happiness of the community. It must be granted, that if men hastily and blindly adopt a system of government, they will as hastily and as blindly be led to alter or abolish it; and changes must ensue, one after another, till the peaceable and better part of the community will grow weary with changes, tumults and disorders, and be disposed to accept any government however despotic, that shall promise stability and firmness.

The first principal question that occurs, is. Whether, considering our situation, we ought to precipitate the adoption of the proposed constitution? If we remain cool and temperate, we are in no immediate danger of any commotions; we are in a state of perfect peace, and in no danger of invasions; the state governments are in the full exercise of their powers; and our governments answer all present exigencies, except the regulation of trade, securing credit, in some cases, and providing for the interest, in

some instances, of the public debts; and whether we adopt a change three or nine months hence, can make but little odds with the private circumstances of individuals; their happiness and prosperity, after all, depend principally upon their own exertions. We are hardly recovered from a long and distressing war: The farmers, fishermen, &c. have not fully repaired the waste made by it. Industry and frugality are again assuming their proper station. Private debts are lessened, and public debts incurred by the war have been, by various ways, diminished; and the public lands have now become a productive source for diminishing them much more. I know uneasy men, who with very much to precipitate, do not admit all these facts; but they are facts well known to all men who are thoroughly informed in the affairs of this country. It must, however, be admitted, that our federal system is defective, and that some of the state governments are not well administered; but, then, we impute to the defects in our governments many evils and embarrassments which are most clearly the result of the late war. We must allow men to conduct on the present occasion, as on all similar one's. They will urge a thousand pretences to answer their purposes on both sides. When we want a man to change his condition, we describe it as wretched, miserable, and despised; and draw a pleasing picture of that which we would have him assume. And when we wish the contrary, we reverse our descriptions. Whenever a clamor is raised, and idle men get to work, it is highly necessary to examine facts carefully, and without unreasonably suspecting men of falshood, to examine, and enquire attentively, under what impressions they act. It is too often the case in political concerns that men state facts not as they are, but as they wish them to be; and almost every man, by calling to mind past scenes, will find this to be true.

Nothing but the passions of ambitious, impatient, or disorderly men, I conceive, will plunge us into commotions, if time should be taken fully to examine and consider the system proposed. Men who feel easy in their circumstances, and such as are not sanguine in their expectations relative to the consequences of the proposed change, will remain quiet under the existing governments. Many commercial and monied men, who are uneasy, not without just cause, ought to be respected; and by no means, unreasonably disappointed in their expectations and hopes;

but as to those who expect employments under the new constitution; as to those weak and ardent men who always expect to be gainers by revolutions, and whose lot it generally is to get out of one difficulty into another, they are very little to be regarded; and as to those who designedly avail themselves of this weakness and ardor, they are to be despised. It is natural for men, who wish to hasten the adoption of a measure, to tell us, now is the crisis—now is the critical moment which must be seized or all will be lost; and to shut the door against free enquiry, whenever conscious the thing presented has defects in it, which time and investigation will probably discover. This has been the custom of tyrants, and their dependants in all ages. If it is true, what has been so often said, that the people of this country cannot change their condition for the worse, I presume it still behoves them to endeavour deliberately to change it for the better. The fickle and ardent, in any community are the proper tools for establishing despotic government. But it is deliberate and thinking men, who must establish and secure governments on free principles. Before they decide on the plan proposed, they will enquire whether it will probably be a blessing or a curse to this people.

The present moment discovers a new face in our affairs. Our object has been all along, to reform our federal system, and to strengthen our governments—to establish peace, order and justice in the community—but a new object now presents. The plan of government now proposed is evidently calculated totally to change, in time, our condition as a people. Instead of being thirteen republics, under a federal head, it is clearly designed to make us one consolidated government. Of this, I think, I shall fully convince you, in my following letters on this subject. This consolidation of the states has been the object of several men in this country for some time past. Whether such a change can ever be effected, in any manner; whether it can be effected without convulsions and civil wars; whether such a change will not totally destroy the liberties of this country—time only can determine.

To have a just idea of the government before us, and to shew that a consolidated one is the object in view, it is necessary not only to examine the plan, but also its history, and the politics of its particular friends.

The confederation was formed when great confidence was placed in the voluntary exertions of individuals, and of the respective states; and the framers of it, to guard against usurpation, so limited, and checked the powers, that, in many respects, they are inadequate to the exigencies of the union. We find, therefore, members of congress urging alterations in the federal system almost as soon as it was adopted. It was early proposed to vest congress with powers to levy an impost, to regulate trade, &c. but such was known to be the caution of the states in parting with power, that the vestment even of these, was proposed to be under several checks and limitations. During the war, the general confusion, and the introduction of paper money, infused in the minds of people vague ideas respecting government and credit. We expected too much from the return of peace, and of course we have been disappointed. Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper money laws, have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government; and this very abuse of power in the legislatures, which in some cases has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which, in great measure, they are rapidly effecting their favourite object. And should an oppressive government be the consequence of the proposed change, prosperity may reproach not only a few overbearing, unprincipled men, but those parties in the states which have misused their powers.

The conduct of several legislatures, touching paper money, and tender laws, has prepared many honest men for changes in government, which otherwise they would not have thought of—when by the evils, on the one hand, and by the secret instigations of artful men, on the other, the minds of men were become sufficiently uneasy, a bold step was taken, which is usually followed by a revolution, or a civil war. A general convention for mere commercial purposes was moved for—the authors of this measure saw that the people’s attention was turned solely to the amendment of the federal system; and that, had the idea of a total change been started, probably no state would have appointed members to the

convention. The idea of destroying ultimately, the state government, and forming one consolidated system, could not have been admitted a convention, therefore, merely for vesting in congress power to regulate trade was proposed. This was pleasing to the commercial towns; and the landed people had little or no concern about it. September, 1786, a few men from the middle states met at Annapolis, and hastily proposed a convention to be held in May, 1787, for the purpose, generally, of amending the confederation this was done before the delegates of Massachusetts, and of the other states arrived still not a word was said about destroying the old constitution, and making a new one—The states still unsuspecting, and not aware that they were passing the Rubicon, appointed members to the new convention, for the sole and express purpose of revising and amending the confederation and, probably, not one man in ten thousand in the United States, till within these ten or twelve days, had an idea that the old ship was to be destroyed, and he put to the alternative of embarking in the new ship presented, or of being left in danger of sinking—The States, I believe, universally supposed the convention would report alterations in the confederation, which would pass an examination in congress, and after being agreed to there, would be confirmed by all the legislatures, or be rejected, Virginia made a very respectable appointment, and placed at the head of it the first man in America. In this appointment there was a mixture of political characters; but Pennsylvania appointed principally those men who are esteemed aristocratical. Here the favourite moment for changing the government was evidently discerned by a few men, who seized it with address. Ten other states appointed, and tho' they chose men principally connected with commerce and the judicial department yet they appointed many good republican characters—had they all attended we should now see, I am persuaded, a better system presented. The non-attendance of eight or nine men, who were appointed members of the convention, I shall ever consider as a very unfortunate event to the United States. Had they attended, I am pretty clear that the result of the convention would not have had that strong tendency to aristocracy now discernable in every part of the plan. There would not have been so great an accumulation of powers, especially as to the internal police of this country in a few hands as the constitution reported proposes to vest in them—the young

visionary men, and the consolidating aristocracy, would have been more restrained than they have been. Eleven states met in the convention, and after four months close attention presented the new constitution, to be adopted or rejected by the people. The uneasy and fickle part of the community may be prepared to receive any form of government; but I presume the enlightened and substantial part will give any constitution presented for their adoption a candid and thorough examination; and silence those designing or empty men, who weakly and rashly attempt to precipitate the adoption of a system of so much importance—We shall view the convention with proper respect and, at the same time, that we reflect there were men of abilities and integrity in it, we must recollect how disproportionately the democratic and aristocratic parts of the community were represented Perhaps the judicious friends and opposers of the new constitution will agree, that it is best to let it rely solely on its own merits, or be condemned for its own defects.

In the first place, I shall premise, that the plan proposed is a plan of accommodation—and that it is in this way only, and by giving up a part of our opinions, that we can ever expect to obtain a government founded in freedom and compact. This circumstance candid men will always keep in view, in the discussion of this subject.

The plan proposed appears to be partly federal, but principally however, calculated ultimately to make the states one consolidated government.

The first interesting question, therefore suggested, is, how far the states can be consolidated into one entire government on free principles. In considering this question extensive objects are to be taken into view, and important changes in the forms of government to be carefully attended to in all their consequences, The happiness of the people at large must be the great object with every honest statesman, and he will direct every movement to this point. If we are so situated as a people, as not to be able to enjoy equal happiness and advantages under one government, the consolidation of the states cannot be admitted.

There are three different forms of free government under which the United States may exist as one nation; and now is, perhaps, the time

to determine to which we will direct our views. 1. Distinct republics connected under a federal head. In this case the respective state governments must be the principal guardians of the peoples rights, and exclusively regulate their internal police; in them must rest the balance of government. The congress of the states, or federal head, must consist of delegates amenable to, and removable by the respective states: This congress must have general directing powers; powers to require men and monies of the states; to make treaties; peace and war; to direct the operations of armies, &c. Under this federal modification of government, the powers of congress would be rather advisory or recommendatory than coercive. 2. We may do away the federal state governments, and form or consolidate all the states into one entire government, with one executive, one judiciary, and one legislature, consisting of senators and representatives collected from all parts of the union: In this case there would be a compleat consolidation of the states. 3. We may consolidate the states as to certain national objects, and leave them severally distinct independent republics, as to internal police generally. Let the general government consist of an executive, a judiciary, and balanced legislature, and its powers extend exclusively to all foreign concerns, causes arising on the seas to commerce, imports, armies, navies, Indian affairs, peace and war, and to a few internal concerns of the community; to the coin, post-offices, weights and measures, a general plan for the militia, to naturalization, and, perhaps to bankruptcies, leaving the internal police of the community, in other respects, exclusively to the state governments; as the administration of justice in all causes arising internally, the laying and collecting of internal taxes, and the forming of the militia according to a general plan prescribed. In this case there would be a compleat consolidation, quoad certain objects only.

Touching the first, or federal plan, I do not think much can be said in its favor: The sovereignty of the nation, without coercive and efficient powers to collect the strength of it, cannot always be depended on to answer the purposes of government; and in a congress of representatives of foreign states, there must necessarily be an unreasonable mixture of powers in the same hands. As to the second, or compleat consolidating plan, it deserves to be carefully considered at this time by every Ameri-

can: If it be impracticable, it is a fatal error to model our governments, directing our views ultimately to it.

The third plan, or partial consolidation, is, in my opinion, the only one that can secure the freedom and happiness of this people. I once had some general ideas that the second plan was practicable, but from long attention, and the proceedings of the convention, I am fully satisfied, that this third plan is the only one we can with safety and propriety proceed upon. Making this the standard to point out, with candor and fairness, the parts of the new constitution which appear to be improper, is my object. The convention appears to have proposed the partial consolidation evidently with a view to collect all powers ultimately, in the United States into one entire government; and from its views in this respect, and from the tenacity of the small states to have an equal vote in the senate, probably originated the greatest defects in the proposed plan.

Independent of the opinions of many great authors, that a free elective government cannot be extended over large territories, a few reflections must evince, that one government and general legislation alone never can extend equal benefits to all parts of the United States: Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded. The United States contain about a million of square miles, and in half a century will, probably, contain ten millions of people; and from the center to the extremes is about 800 miles.

Before we do away the state governments or adopt measures that will tend to abolish them, and to consolidate the states into one entire government several principles should be considered and facts ascertained: These, and my examination into the essential parts of the proposed plan, I shall pursue in my next.

YOUR'S, &C.
THE FEDERAL FARMER.

LETTER II

OCTOBER 9, 1787.

DEAR SIR,

The essential parts of a free and good government are a full and equal representation of the people in the legislature, and the jury trial of the vicinage in the administration of justice—a full and equal representation, is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled—a fair representation, therefore, should be so regulated, that every order of men in the community, according to the common course of elections, can have a share in it—in order to allow professional men, merchants, traders, farmers, mechanics, &c. to bring a just proportion of their best informed men respectively into the legislature, the representation must be considerably numerous—We have about 200 state senators in the United States, and a less number than that of federal representatives cannot, clearly, be a full representation of this people, in the affairs of internal taxation and police, were there but one legislature for the whole union. The representation cannot be equal, or the situation of the people proper for one government only—if the extreme parts of the society cannot be represented as fully as the central—It is apparently impracticable that this should be the case in this extensive country it would be impossible to collect a representation of the parts of the country five, six, and seven hundred miles from the seat of government.

Under one general government alone, there could be but one judiciary, one supreme and a proper number of inferior courts. I think it would be totally impracticable in this case to preserve a due administration of justice, and the real benefits of the jury trial of the vicinage there are now supreme courts in each state in the union, and a great number of county and other courts subordinate to each supreme court most of

these supreme and inferior courts are itinerant, and hold their sessions in different parts every year of their respective states, counties and districts—with all these moving courts, our citizens, from the vast extent of the country, must travel very considerable distances from home to find the place where justice is administered. I am not for bringing justice so near to individuals as to afford them any temptation to engage in law suits; though I think it one of the greatest benefits in a good government, that each citizen should find a court of justice within a reasonable distance, perhaps, within a day's travel of his home; so that, without great inconveniences and enormous expense, he may have the advantages of his witnesses and jury—it would be impracticable to derive these advantages from one judiciary the one supreme court at most could only set in the centre of the union, and move once a year into the centre of the eastern and southern extremes of it—and, in this case, each citizen, on an average, would travel 150 or 200 miles to find this court that, however, inferior courts might be properly placed in the different counties, and districts of the union, the appellate jurisdiction would be intolerable and expensive.

If it were possible to consolidate the states, and preserve the features of a free government, still it is evident that the middle states, the parts of the union, about the seat of government, would enjoy great advantages, while the remote states would experience the many inconveniences of remote provinces. Wealth, offices, and the benefits of government would collect in the centre: and the extreme states; and their principal towns, become much less important.

There are other considerations which tend to prove that the idea of one consolidated whole, on free principles, is ill founded the laws of a free government rest on the confidence of the people, and operate gently—and never can extend their influence very far if they are executed on free principles, about the centre, where the benefits of the government induce the people to support it voluntarily; yet they must be executed on the principles of fear and force in the extremes This has been the case with every extensive republic of which we have any accurate account.

There are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people, in forming this compact, will not resign

all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern: and the latter will know they cannot be passed unperceived by the former, and without giving a general alarm. These rights should be made the basis of every constitution; and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only. I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights from one common source, the British systems; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ so essentially in these respects, and even in the important article of the trial by jury, that when assembled in convention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact. If so, we proceed to consolidate the states on no solid basis whatever.

But I do not pay much regard to the reasons given for not bottoming the new constitution on a better bill of rights. I still believe a complete federal bill of rights to be very practicable. Nevertheless I acknowledge the proceedings of the convention furnish my mind with many new and strong reasons, against a complete consolidation of the states. They tend to convince me, that it cannot be carried with propriety very far—that the convention have gone much farther in one respect than they found it practicable to go in another; that is, they propose to lodge in the general government very extensive powers—powers nearly, if not altogether, complete and unlimited, over the purse and the sword. But, in its organization, they furnish the strongest proof that the proper limbs, or parts of a government, to support and execute those powers on proper principles (or in which they can be safely lodged) cannot be formed. These powers must be lodged somewhere in every society; but then they should be lodged where the strength and guardians of the people are collected. They can be wielded, or safely used, in a free country

only by an able executive and judiciary, a respectable senate, and a secure, full, and equal representation of the people. I think the principles I have premised or brought into view, are well founded—I think they will not be denied by any fair reasoner. It is in connection with these, and other solid principles, we are to examine the constitution. It is not a few democratic phrases, or a few well formed features, that will prove its merits; or a few small omissions that will produce its rejection among men of sense; they will enquire what are the essential powers in a community, and what are nominal ones; where and how the essential powers shall be lodged to secure government, and to secure true liberty.

In examining the proposed constitution carefully, we must clearly perceive an unnatural separation of these powers from the substantial representation of the people. The state government will exist, with all their governors, senators, representatives, officers and expences; in these will be nineteen twentieths of the representatives of the people; they will have a near connection, and their members an immediate intercourse with the people; and the probability is, that the state governments will possess the confidence of the people, and be considered generally as their immediate guardians.

The general government' will consist of a new species of executive, a small senate, and a very small house of representatives. As many citizens will be more than three hundred miles from the seat of this government as will be nearer to it, its judges and officers cannot be very numerous, without making our governments very expensive. Thus will stand the state and the general governments, should the constitution be adopted without any alterations in their organization; but as to powers, the general government will possess all essential ones, at least on paper, and those of the states a mere shadow of power. And therefore, unless the people shall make some great exertions to restore to the state governments their powers in matters of internal police; as the powers to lay and collect, exclusively, internal taxes, to govern the militia, and to hold the decisions of their own judicial courts upon their own laws final, the balance cannot possibly continue long; but the state governments must be annihilated, or continue to exist for no purpose.

It is however to be observed, that many of the essential powers given the national government are not exclusively given; and the general government may have prudence enough to forbear the exercise of those which may still be exercised by the respective states. But this cannot justify the impropriety of giving powers, the exercise of which prudent men will not attempt, and imprudent men will, or probably can, exercise only in a manner destructive of free government. The general government, organized as it is, may be adequate to many valuable objects, and be able to carry its laws into execution on proper principles in several cases; but I think its warmest friends will not contend, that it can carry all the powers proposed to be lodged in it into effect, without calling to its aid a military force, which must very soon destroy all elective governments in the country, produce anarchy, or establish despotism. Though we cannot have now a complete idea of what will be the operations of the proposed system, we may, allowing things to have their common course, have a very tolerable one. The powers lodged in the general government, if exercised by it, must intimately effect the internal police of the states, as well as external concerns; and there is no reason to expect the numerous state governments, and their connections, will be very friendly to the execution of federal laws in those internal affairs, which hitherto have been under their own immediate management. There is more reason to believe, that the general government, far removed from the people, and none of its members elected oftener than once in two years, will be forgot or neglected, and its laws in many cases disregarded, unless a multitude of officers and military force be continually kept in view, and employed to enforce the execution of the laws, and to make the government feared and respected. No position can be truer than this. That in this country either neglected laws, or a military execution of them, must lead to a revolution, and to the destruction of freedom. Neglected laws must first lead to anarchy and confusion; and a military execution of laws is only a shorter way to the same point—despotic government.

YOUR'S, &C.
THE FEDERAL FARMER.

LETTER III

OCTOBER 10TH, 1787.

DEAR SIR,

The great object of a free people must be so to form their government and laws, and so to administer them, as to create a confidence in, and respect for the laws; and thereby induce the sensible and virtuous part of the community to declare in favor of the laws, and to support them without an expensive military force. I wish, though I confess I have not much hope, that this may be the case with the laws of congress under the new constitution. I am fully convinced that we must organize the national government on different principles, and make the parts of it more efficient, and secure in it more effectually the different interests in the community; or else Leave in the state governments some powers proposed to be lodged in it—at least till such an organization shall be found to be practicable. Not sanguine in my expectations of a good federal administration, and satisfied, as I am, of the impracticability of consolidating the states, and at the same time of preserving the rights of the people at large, I believe we ought still to leave some of those powers in the state governments, in which the people, in fact, will still be represented—to define some other powers proposed to be vested in the general government, more carefully, and to establish a few principles to secure a proper exercise of the powers given it. It is not my object to multiply objections, or to contend about considerable powers or amendments. I wish the system adopted with a few alterations; but those, in my mind, are essential ones; if adopted without, every good citizen will acquiesce, though I shall consider the duration of our governments, and the liberties of this people, very much dependant on the administration of the general government. A wise and honest administration, may make the people happy under any government; but

necessity only can justify even our leaving open avenues to the abuse of power, by wicked, unthinking, or ambitious men, I will examine, first, the organization of the proposed government, in order to judge; 2d, with propriety, what powers are improperly, at least prematurely lodged in it. I shall examine, 3d, the undefined powers; and 4th, those powers, the exercise of which is not secured on safe and proper ground.

First. As to the organization the house of representatives, the democratic branch, as it is called, is to consist of 65 members: that is, about one representative for fifty thousand inhabitants, to be chosen biennially the federal legislature may increase this number to one for each thirty thousand inhabitants, abating fractional numbers in each state. Thirty three representatives will make a quorum for doing business, and a majority of those present determine the sense of the house. I have no idea that the interests, feelings, and opinions of three or four millions of people, especially touching internal taxation, can be collected in such a house. In the nature of things, nine times in ten, men of the elevated classes in the community only can be chosen Connecticut, for instance, will have five representatives not one man in a hundred of those who form the democratic branch in the state legislature, will, on a fair computation, be one of the five.—The people of this country, in one sense, may all be democratic; but if we make the proper distinction between the few men of wealth and abilities, and consider them, as we ought, as the natural aristocracy of the country, and the great body of the people, the middle and lower classes, as the democracy, this federal representative branch will have but very little democracy in it, even this small representation is not secured on proper principles. The branches of the legislature are essential parts of the fundamental compact, and ought to be so fixed by the people, that the legislature cannot alter itself by modifying the elections of its own members. This, by a part of Art. i, Sect. 4, the general legislature may do, it may evidently so regulate elections as to secure the choice of any particular description of men. It may make the whole state one district—make the capital, or any places in the state, the place or places of election—it may declare that the five men (or whatever the number may be the state may chuse) who shall have the most votes shall be considered as chosen. In this case it is easy to perceive how the people

who live scattered in the inland towns will bestow their votes on different men—and how a few men in a city, in any order or profession, may unite and place any five men they please highest among those that may be voted for and all this may be done constitutionally, and by those silent operations, which are not immediately perceived by the people in general. I know it is urged, that the general legislature will be disposed to regulate elections on fair and just principles: This may be true—good men will generally govern well with almost any constitution: but why in laying the foundation of the social system, need we unnecessarily leave a door open to improper regulations?—This is a very general and unguarded clause, and many evils may flow from that part which authorises the congress to regulate elections. Were it omitted, the regulations of elections would be solely in the respective states, where the people are substantially represented; and where the elections ought to be regulated, otherwise to secure a representation from all parts of the community, in making the constitutions, we ought to provide for dividing each state into a proper number of districts, and for confining the electors in each district to the choice of some men, who shall have a permanent interest and residence in it; and also for this essential object, that the representative elected shall have a majority of the votes of those electors who shall attend and give their votes.

In considering the practicability of having a full and equal representation of the people from all parts of the union, not only distances and different opinions, customs and views, common in extensive tracts of country, are to be taken into view but many differences peculiar to Eastern, Middle, and Southern States. These differences are not so perceivable among the members of congress, and men of general information in the states, as among the men who would properly form the democratic branch. The Eastern states are very democratic, and composed chiefly of moderate freeholders; they have but few rich men and no slaves; the Southern states are composed chiefly of rich planters and slaves; they have but few moderate freeholders, and the prevailing influence, in them is generally a dissipated aristocracy: The Middle states partake partly of the Eastern and partly of the Southern character.

Perhaps, nothing could be more disjointed, unweildly and incompetent to doing business with harmony and dispatch, than a federal house of representatives properly numerous for the great objects of taxation, &c. collected from the several states; whether such men would ever act in concert; whether they would not worry along a few years, and then be the means of separating the parts of the union, is very problematical? View this system in whatever form we can, propriety brings us still to this point, a federal government possessed of general and complete powers, as to those national objects which cannot well come under the cognizance of the internal laws of the respective states, and this federal government, accordingly, consisting of branches not very numerous.

The house of representatives is on the plan of consolidation, but the senate is entirely on the federal plan; and Delaware will have as much constitutional influence in the senate, as the largest state in the union: and in this senate are lodged legislative, executive and judicial powers: Ten states in this union urge that they are small states, nine of which were present in the convention.—They were interested in collecting large powers into the hands of the senate, in which each state still will have its equal share of power. I suppose it was impracticable for the three large states, as they were called, to get the senate formed on any other principles: But this only proves, that we cannot form one general government on equal and just principles—and proves, that we ought not to lodge in it such extensive powers before we are convinced of the practicability of organizing it on just and equal principles. The senate will consist of two members from each state, chosen by the state legislatures, every sixth year. The clause referred to, respecting the elections of representatives, empowers the general legislature to regulate the elections of senators also, “except as to the places of chusing senators.”—There is, therefore, but little more security in the elections than in those of representatives: Fourteen senators make a quorum for business, and a majority of the senators present give the vote of the senate, except in giving judgment upon an impeachment, or in making treaties, or in expelling a member, when two-thirds of the senators present must agree—The members of the legislature are not excluded from being elected to any military offices, or any civil offices, except those created, or the emoluments of which shall

be increased by themselves: two-thirds of the members present, of either house, may expel a member at pleasure. The senate is an independant branch of the legislature, a court for trying impeachments, and also a part of the executive, having a negative in the making of all treaties, and in appointing almost all officers.

The vice president is not a very important, if not an unnecessary part of the system—he may be a part of the senate at one period, and act as the supreme executive magistrate at another. The election of this officer, as well as of the president of the United States seems to be properly secured; but when we examine the powers of the president, and the forms of the executive, we shall perceive that the general government, in this part, will have a strong tendency to aristocracy, or the government of the few. The executive is, in fact, the president and senate in all transactions of any importance; the president is connected with, or tied to the senate; he may always act with the senate, but never can effectually counteract its views: The president can appoint no officer, civil or military, who shall not be agreeable to the senate; and the presumption is, that the will of so important a body will not be very easily controuled, and that it will exercise its powers with great address.

In the judicial department, powers ever kept distinct in well balanced governments, are no less improperly blended in the hands of the same men—in the judges of the supreme court is lodged the law, the equity and the fact. It is not necessary to pursue the minute organical parts of the general government proposed.—There were various interests in the convention, to be reconciled, especially of large and small states; of carrying and non-carrying states; and of states more and states less democratic—vast labour and attention were by the convention bestowed on the organization of the parts of the constitution offered; still it is acknowledged there are many things radically wrong in the essential parts of this constitution—but it is said that these are the result of our situation: On a full examination of the subject, I believe it; but what do the laborious inquiries and determination of the convention prove? If they prove any thing, they prove that we cannot consolidate the states on proper principles: The organization of the government presented proves, that we cannot form a general government in which all power can be safely

lodged; and a little attention to the parts of the one proposed will make it appear very evident, that all the powers proposed to be lodged in it, will not be then well deposited, either for the purposes of government, or the preservation of liberty. I will suppose no abuse of power in those cases, in which the abuse of it is not well guarded against—I will suppose the words authorizing the general government to regulate the elections of its own members struck out of the plan, or free district elections, in each state, amply secured.—That the small representation provided for shall be as fair and equal as it is capable of being made—I will suppose the judicial department regulated on pure principles, by future laws, as far as it can be by the constitution, and consist with the situation of the country—still there will be an unreasonable accumulation of powers in the general government if all be granted, enumerated in the plan proposed. The plan does not present a well balanced government: The senatorial branch of the legislative and the executive are substantially united, and the president, or the state executive magistrate, may aid the senatorial interest when weakest, but never can effectually support the democratic, however it may be oppressed;—the excellency, in my mind, of a well-balanced government is that it consists of distinct branches, each sufficiently strong and independant to keep its own station, and to aid either of the other branches which may occasionally want aid.

The convention found that any but a small house of representatives would be expensive, and that it would be impracticable to assemble a large number of representatives. Not only the determination of the convention in this case, but the situation of the states, proves the impracticability of collecting, in any one point, a proper representation.

The formation of the senate, and the smallness of the house, being, therefore, the result of our situation, and the actual state of things, the evils which may attend the exercise of many powers in this national government may be considered as without a remedy.

All officers are impeachable before the senate only—before the men by whom they are appointed, or who are consenting to the appointment of these officers. No judgment of conviction, on an impeachment, can be given unless two thirds of the senators agree. Under these circumstances the right of impeachment, in the house, can be of but little importance;

the house cannot expect often to convict the offender; and, therefore, probably, will but seldom or never exercise the right. In addition to the insecurity and inconveniences attending this organization beforementioned, it may be observed, that it is extremely difficult to secure the people against the fatal effects of corruption and influence. The power of making any law will be in the president, eight senators, and seventeen representatives, relative to the important objects enumerated in the constitution. Where there is a small representation a sufficient number to carry any measure, may, with ease, be influenced by bribes, offices and civilities; they easily form private junctoes, and out-door meetings, agree on measures, and carry them by silent votes.

Impressed, as I am, with a sense of the difficulties there are in the way of forming the parts of a federal government on proper principles, and seeing a government so unsubstantially organized, after so arduous an attempt has been made, I am led to believe, that powers ought to be given to it with great care and caution.

In the second place it is necessary, therefore, to examine the extent, and the probable operations of some of those extensive powers proposed to be vested in this government. These powers, legislative, executive, and judicial, respect internal as well as external objects. Those respecting external objects, as all foreign concerns, commerce, impost's, all causes arising on the seas, peace and war, and Indian affairs, can be lodged nowhere else, with any propriety, but in this government. Many powers that respect internal objects ought clearly to be lodged in it; as those to regulate trade between the states, weights and measures, the coin or current monies, post-offices, naturalization, &c. These powers may be exercised without essentially effecting the internal police of the respective states: But powers to lay and collect internal taxes, to form the militia, to make bankrupt laws, and to decide on appeals, questions arising on the internal laws of the respective states, are of a very serious nature, and carry with them almost all other powers. These taken in connection with the others, and powers to raise armies and build navies, proposed to be lodged in this government, appear to me to comprehend all the essential powers in this community, and those which will be left to the states will be of no great importance.

A power to lay and collect taxes at discretion, is, in itself, of very great importance. By means of taxes, the government may command, the whole or any part of the subject's property. Taxes may be of various kinds; but there is a strong distinction between external and internal taxes. External taxes are impost duties, which are laid on imported goods; they may usually be collected in a few seaport towns, and of a few individuals, though ultimately paid by the consumer; a few officers can collect them, and they can be carried no higher than trade will bear, or smuggling permit—that in the very nature of commerce, bounds are set to them. But internal taxes, as poll and land taxes, excises, duties on all written instruments, &c. may fix themselves on every person and species of property in the community; they may be carried to any lengths, and in proportion as they are extended, numerous officers must be employed to assess them, and to enforce the collection of them. In the United Netherlands the general government has compleat powers, as to external taxation; but as to internal taxes, it makes requisitions on the provinces. Internal taxation in this country is more important, as the country is so very extensive. As many assessors and collectors of federal taxes will be above three hundred miles from the seat of the federal government as will be less. Besides, to lay and collect taxes, in this extensive country, must require a great number of congressional ordinances, immediately operating upon the body of the people; these must continually interfere with the state laws, and thereby produce disorder and general dissatisfaction, till the one system of laws or the other, operating on the same subjects, shall be abolished. These ordinances alone, to say nothing of those respecting the militia, coin, commerce, federal judiciary, &c. &c. will probably soon defeat the operations of the state laws and governments.

Should the general government think it politic, as some administration (if not all) probably will, to look for a support in a system of influence, the government will take every occasion to multiply laws, and officers to execute them, considering these as so many necessary props for its own support. Should this system of policy be adopted, taxes more productive than the impost duties will, probably, be wanted to support the government, and to discharge foreign demands, without leaving any thing for the domestic creditors. The internal sources of taxation then

must be called into operation, and internal tax laws and federal assessors and collectors spread over this immense country. All these circumstances considered, is it wise, prudent, or safe, to vest the powers of laying and collecting internal taxes in the general government, while imperfectly organized and inadequate; and to trust to amending it hereafter, and making it adequate to this purpose? It is not only unsafe but absurd to lodge power in a government before it is fitted to receive it? It is confessed that this power and representation ought to go together. Why give the power first? Why give the power to the few, who, when possessed of it, may have address enough to prevent the increase of representation? Why not keep the power, and, when necessary, amend the constitution, and add to its other parts this power, and a proper increase of representation at the same time? Then men who may want the power will be under strong inducements to let in the people, by their representatives, into the government, to hold their due proportion of this power. If a proper representation be impracticable, then we shall see this power resting in the states, where it at present ought to be, and not inconsiderately given up.

When I recollect how lately congress, conventions, legislatures, and people contended in the cause of liberty, and carefully weighed the importance of taxation, I can scarcely believe we are serious in proposing to vest the powers of laying and collecting internal taxes in a government so imperfectly organized for such purposes. Should the United States be taxed by a house of representatives of two hundred members, which would be about fifteen members for Connecticut, twenty-five for Massachusetts, &c. still the middle and lower classes of people could have no great share, in fact, in taxation. I am aware it is said, that the representation proposed by the new constitution is sufficiently numerous; it may be for many purposes; but to suppose that this branch is sufficiently numerous to guard the rights of the people in the administration of the government, in which the' purse and sword is placed, seems to argue that we have forgot what the true meaning of representation is. I am sensible also, that it is said that congress will not attempt to lay and collect internal taxes; that it is necessary for them to have the power, though it cannot probably be exercised. I admit that it is not probable that any prudent

congress will attempt to lay and collect internal taxes, especially direct taxes: but this only proves, that the power would be improperly lodged in congress, and that it might be abused by imprudent and designing men.

I have heard several gentlemen, to get rid of objections to this part of the constitution, attempt to construe the powers relative to direct taxes, as those who object to it would have them; as to these, it is said, that congress will only have power to make requisitions, leaving it to the states to lay and collect them. I see but very little colour for this construction, and the attempt only proves that this part of the plan cannot be defended. By this plan there can be no doubt, but that the powers of congress will be complete as to all kinds of taxes whatever—Further, as to internal taxes, the state governments will have concurrent powers with the general government, and both may tax the same objects in the same year; and the objection that the general government may suspend a state tax, as a necessary measure for the promoting the collection of a federal tax, is not without foundation. As the states owe large debts, and have large demands upon them individually, there clearly will be a propriety in leaving in their possession exclusively, some of the internal sources of taxation, at least until the federal representation shall be properly increased: The power in the general government to lay and collect internal taxes, will render its powers respecting armies, navies and the militia, the more exceptionable. By the constitution it is proposed that congress shall have power “to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; to provide and maintain a navy; to provide for calling forth the militia to execute the laws of the union; suppress insurrections, and repel invasions: to provide for organizing, arming, and disciplining the militia; reserving to the states the right to appoint the officers, and to train the militia according to the discipline prescribed by congress;” congress will have unlimited power to raise armies, and to engage officers and men for any number of years; but a legislative act applying money for their support can have operation for no longer term than two years, and if a subsequent congress do not within the two years renew the appropriation, or further appropriate monies for the use of the army, the army will be left to take care of itself. When an army shall once be raised for a number of years, it is not

probable that it will find much difficulty in getting congress to pass laws for applying monies to its support. I see so many men in America fond of a standing army, and especially among those who probably will have a large share in administering the federal system; it is very evident to me, that we shall have a large standing army as soon as the monies to support them can be possibly found. An army is not a very agreeable place of employment for the young gentlemen of many families. A power to raise armies must be lodged some where; still this will not justify the lodging this power in a bare majority of so few men without any checks; or in the government in which the great body of the people, in the nature of things, will be only nominally represented. In the state governments the great body of the people, the yeomanry, &c. of the country, are represented: It is true they will chuse the members of congress, and may now and then chuse a man of their own way of thinking; but it is not impossible for forty, or thirty thousand people in this country, one time in ten to find a man who can possess similar feelings, views, and interests with themselves: Powers to lay and collect taxes and to raise armies are of the greatest moment; for carrying them into effect, laws need not be frequently made, and the yeomanry, &c. of the country ought substantially to have a check upon the passing of these laws; this check ought to be placed in the legislatures, or at least, in the few men the common people of the country, will, probably, have in congress, in the true sense of the word, "from among themselves." It is true, the yeomanry of the country possess the lands, the weight of property, possess arms, and are too strong a body of men to be openly offended—and, therefore, it is urged, they will take care of themselves, that men who shall govern will not dare pay any disrespect to their opinions. It is easily perceived, that if they have not their proper negative upon passing laws in congress, or on the passage of laws relative to taxes and armies, they may in twenty or thirty years be by means imperceptible to them, totally deprived of that boasted weight and strength: This may be done in a great measure by congress, if disposed to do it, by modelling the militia. Should one fifth or one eighth part of the men capable of bearing arms, be made a select militia, as has been proposed, and those the young and ardent part of the community, possessed of but little or no property, and all the others put upon a plan that will render them of no importance, the former will answer all the

purposes of an army, while the latter will be defenceless. The state must train the militia in such form and according to such systems and rules as congress shall prescribe: and the only actual influence the respective states will have respecting the militia will be in appointing the officers. I see no provision made for calling out the *posse comitatus* for executing the laws of the union, but provision is made for congress to call forth the militia for the execution of them—and the militia in general, or any select part of it, may be called out under military officers, instead of the sheriff to enforce an execution of federal laws, in the first instance, and thereby introduce an entire military execution of the laws. I know that powers to raise taxes, to regulate the military strength of the community on some uniform plan, to provide for its defence and internal order, and for duly executing the laws, must be lodged somewhere; but still we ought not so to lodge them, as evidently to give one order of men in the community, undue advantages over others; or commit the many to the mercy, prudence, and moderation of the few. And so far as it may be necessary to lodge any of the peculiar powers in the general government, a more safe exercise of them ought to be secured, by requiring the consent of two-thirds or three-fourths of congress thereto—until the federal representation can be increased, so that the democratic members in congress may stand some tolerable chance of a reasonable negative, in behalf of the numerous, important, and democratic part of the community.

I am not sufficiently acquainted with the laws and internal police of all the states to discern fully, how general bankrupt laws, made by the union, would effect them, or promote the public good. I believe the property of debtors, in the several states, is held responsible for their debts in modes and forms very different. If uniform bankrupt laws can be made without producing real and substantial inconveniences, I wish them to be made by congress.

There are some powers proposed to be lodged in the general government in the judicial department, I think very unnecessarily, I mean powers respecting questions arising upon the internal laws of the respective states. It is proper the federal judiciary should have powers co-extensive with the federal legislature—that is, the power of deciding finally on the laws of the union. By Art. 3, Sec. 2. the powers of the

federal judiciary are extended (among other things) to all cases between a state and citizens of another state—between citizens of different states—between a state or the citizens thereof, and foreign states, citizens or subjects. Actions in all these cases, except against a state government, are now brought and finally determined in the law courts of the states respectively and as there are no words to exclude these courts of their jurisdiction in these cases, they will have concurrent jurisdiction with the inferior federal courts in them; and, therefore, if the new constitution be adopted without any amendment in this respect, all those numerous actions, now brought in the state courts between our citizens and foreigners, between citizens of different states, by state governments against foreigners, and by state governments against citizens of other states, may also be brought in the federal courts; and an appeal will lay in them from the state courts or federal inferior courts to the supreme judicial court of the union. In almost all these cases, either party may have the trial by jury in the state courts; except paper money and tender laws, which are wisely guarded against in the proposed constitution; justice may be obtained in these courts on reasonable terms; they must be more competent to proper decisions on the laws of their respective states, than the federal courts can possibly be. I do not, in any point of view, see the need of opening a new jurisdiction in these causes—of opening a new scene of expensive law suits, of suffering foreigners, and citizens of different states, to drag each other many hundred miles into the federal courts. It is true, those courts may be so organized by a wise and prudent legislature, as to make the obtaining of justice in them tolerably easy; they may in general be organized on the common law principles of the country: But this benefit is by no means secured by the constitution. The trial by jury is secured only in those few criminal cases, to which the federal laws will extend—as crimes committed on the seas, against the laws of nations, treason and counterfeiting the federal securities and coin: But even in these cases, the jury trial of the vicinage is not secured—particularly in the large states, a citizen may be tried for a crime committed in the state, and yet tried in some states 500 miles from the place where it was committed; but the jury trial is not secured at all in civil causes. Though the convention have not established this trial, it is to be hoped that congress, in putting the new system into execution, will do it by a legislative act,

in all cases in which it can be done with propriety. Whether the jury trial is not excluded the supreme judicial court is an important question. By Art. 3, Sec. 2, all cases affecting ambassadors, other public ministers, and consuls, and in those cases in which a state shall be party, the supreme court shall have jurisdiction. In all the other cases beforementioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exception, and under such regulations as the congress shall make. By court is understood a court consisting of judges; and the idea of a jury is excluded. This court, or the judges, are to have jurisdiction on appeals, in all the cases enumerated, as to law and fact; the judges are to decide the law and try the fact, and the trial of the fact being assigned to the judges by the constitution, a jury for trying the fact is excluded; however, under the exceptions and powers to make regulations, congress I may, perhaps, introduce the jury, to try the fact in most necessary cases.

There can be but one supreme court in which the final jurisdiction will centre in all federal causes—except in cases where appeals by law shall not be allowed: The judicial powers of the federal courts extend in law and equity to certain cases: and, therefore, the powers to determine on the law, in equity, and as to the fact, all will concentrate in the supreme court:—These powers, which by this constitution are blended in the same hands, the same judges, are in Great-Britain deposited in different hands—to wit, the decision of the law in the law judges, the decision in equity in the chancellor, and the trial of the fact in the jury. It is a very dangerous thing to vest in the same judge power to decide on the law, and also general powers in equity; for if the law restrain him, he is only to step into his shoes of equity, and give what judgment his reason or opinion may dictate; we have no precedents in this country, as yet, to regulate the divisions in equity as in Great Britain; equity, therefore, in the supreme court for many years will be mere discretion. I confess in the constitution of this supreme court, as left by the constitution, I do not see a spark of freedom or a shadow of our own or the British common law.

This court is to have appellate jurisdiction in all the other cases before mentioned: Many sensible men suppose that cases before mentioned respect, as well the criminal cases as the civil ones mentioned antecedently in the constitution, if so an appeal is allowed in criminal cases—contrary

to the usual sense of law. How far it may be proper to admit a foreigner or the citizen of another state to bring actions against state governments, which have failed in performing so many, promises made during the war is doubtful: How far it may be proper so to humble a state, as to oblige it to answer to an individual in a court of law, is worthy of consideration; the states are now subject to no such actions; and this new jurisdiction will subject the states, and many defendants to actions, and processes, which were not in the contemplation of the parties, when the contract was made; all engagements existing between citizens of different states, citizens and foreigners, states and foreigners; and states and citizens of other states were made the parties contemplating the remedies then existing on the laws of the states and the new remedy proposed to be given in the federal courts, can be founded on no principle whatever.

YOUR'S, &C.
THE FEDERAL FARMER.

CENTINEL, No. I

Centinel

THE INDEPENDENT GAZETTEER · 5 OCTOBER 1787

Pennsylvania moved first and moved fast. The Convention had barely adjourned when the state's assembly, with the opposition members physically dragged into the chamber to make a quorum, called a ratifying convention for November. Philadelphia was the seat of the federal Convention and the stronghold of its friends, and the celebrations there were loud enough to persuade many that the question was already settled. It was into that atmosphere that "Centinel" published this letter in Eleazer Oswald's *Independent Gazetteer* on the fifth of October, less than three weeks after the Constitution was signed. The author was almost certainly Samuel Bryan, son of a judge of the state supreme court, though the secret was kept at the time.

Centinel's voice is unlike the others in this volume. Where the Federal Farmer reasons and Brutus argues from principle, Centinel accuses—and he begins by naming names. The two men in whom America has the highest confidence, he says without quite saying it, have been imposed upon: Washington by his inexperience in such matters, Franklin by the weakness and indecision of old age. It was a bold thing to print, and it tells the reader something about how high the stakes were reckoned to be.

The substance of the letter is twofold. The first is a critique of balanced government itself: Centinel takes as his target the doctrine of John Adams's *Defence of the Constitutions*, holding that three co-equal branches cannot in fact balance one another, that such a scheme only confuses responsibility, and that a single legislature, annually elected and closely watched, is the only frame in which a people can hold its rulers to account. The second is a catalogue of what the proposed constitution would do—unlimited taxation, a standing army in time of peace, the supremacy of federal over state law, the loss of the civil jury, and no declaration of rights at all. Note where he places the liberty of the press: not among the amenities of a free state, but as the instrument by which everything else is defended, and the one thing the Convention passed over in silence.

The copy-text is the 1888 reprint of the *Independent Gazetteer* letter in McMaster and Stone's collection of the Pennsylvania debate. Where the original set words in full capitals for emphasis, they are given here in small capitals.

Mr. Oswald: As the Independent Gazetteer seems free for the discussion of all public matters, I expect you will give the following a place in your next.

TO THE FREEMEN OF PENNSYLVANIA.

FRIENDS, COUNTRYMEN AND FELLOW CITIZENS.

Permit one of yourselves to put you in mind of certain liberties and privileges secured to you by the constitution of this commonwealth, and to beg your serious attention to his uninterested opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government secures to you a right to hold yourselves, houses, papers and possessions free from search and seizure, and therefore warrants granted without oaths or affirmations first made, affording sufficient foundations for them, whereby any officer or messenger may be commanded or required to search your houses or seize your persons or property not particularly described in such warrant, shall not be granted. Your constitution further provides "that in controversies respecting property, and in suits between man and man, the parties have a right to trial by jury, which ought to be held sacred." It also provides and declares, "that the people have a right of FREEDOM OF SPEECH, and of writing and PUBLISHING their sentiments, therefore THE FREEDOM OF THE PRESS OUGHT NOT TO BE RESTRAINED." The constitution of Pennsylvania is yet in existence, as yet you have the right to freedom of speech, and of publishing your sentiments. How long those rights will appertain to you, you yourselves are called upon to say; whether your houses shall continue to be your castles, whether your papers, your persons and your property, are to be held sacred and free from general warrants, you are now to determine. Whether the trial by jury is to continue as your birth-right, the freemen of Pennsylvania, nay, of all America, are now called upon to declare.

Without presuming upon my own judgment, I cannot think it an unwarrantable presumption to offer my private opinion, and call upon others for theirs; and if I use my pen with the boldness of a freeman, it is

because I know that the liberty of the press yet remains unviolated and juries yet are judges.

The late Convention have submitted to your consideration a plan of a new federal government. The subject is highly interesting to your future welfare. Whether it be calculated to promote the great ends of civil society, viz., the happiness and prosperity of the community, it behoves you well to consider, uninfluenced by the authority of names. Instead of that frenzy of enthusiasm, that has actuated the citizens of Philadelphia, in their approbation of the proposed plan, before it was possible that it could be the result of a rational investigation into its principles, it ought to be dispassionately and deliberately examined on its own intrinsic merit, the only criterion of your patronage. If ever free and unbiased discussion was proper or necessary, it is on such an occasion. All the blessings of liberty and the dearest privileges of freemen are now at stake and dependent on your present conduct. Those who are competent to the task of developing the principles of government, ought to be encouraged to come forward, and thereby the better enable the people to make a proper judgment; for the science of government is so abstruse, that few are able to judge for themselves. Without such assistance the people are too apt to yield an implicit assent to the opinions of those characters whose abilities are held in the highest esteem, and to those in whose integrity and patriotism they can confide; not considering that the love of domination is generally in proportion to talents, abilities and superior acquirements, and that the men of the greatest purity of intention may be made instruments of despotism in the hands of the artful and designing. If it were not for the stability and attachment which time and habit gives to forms of government, it would be in the power of the enlightened and aspiring few, if they should combine, at any time to destroy the best establishments, and even make the people the instruments of their own subjugation. The late revolution having effaced in a great measure all former habits, and the present institutions are so recent, that there exists not that great reluctance to innovation, so remarkable in old communities, and which accords with reason, for the most comprehensive mind cannot foresee the full operation of material changes on civil polity; it is the genius of the common law to

resist innovation. The wealthy and ambitious, who in every community think they have a right to lord it over their fellow creatures, have availed themselves very successfully of this favorable disposition; for the people thus unsettled in their sentiments, have been prepared to accede to any extreme of government. All the distresses and difficulties they experience, proceeding from various causes, have been ascribed to the impotency of the present confederation, and thence they have been led to expect full relief from the adoption of the proposed system of government; and in the other event, immediately ruin and annihilation as a nation. These characters flatter themselves that they have lulled all distrust and jealousy of their new plan, by gaining the concurrence of the two men in whom America has the highest confidence, and now triumphantly exult in the completion of their long meditated schemes of power and aggrandizement. I would be very far from insinuating that the two illustrious personages alluded to, have not the welfare of their country at heart; but that the unsuspecting goodness and zeal of the one has been imposed on, in a subject of which he must be necessarily inexperienced, from his other arduous engagements; and that the weakness and indecision attendant on old age, has been practiced on in the other.

I am fearful that the principles of government inculcated in Mr. Adams' treatise, and enforced in the numerous essays and paragraphs in the newspapers, have misled some well designing members of the late Convention. But it will appear in the sequel, that the construction of the proposed plan of government is infinitely more extravagant.

I have been anxiously expecting that some enlightened patriot would, ere this, have taken up the pen to expose the futility, and counteract the baneful tendency of such principles. Mr. Adams' *sine qua non* of a good government is three balancing powers; whose repelling qualities are to produce an equilibrium of interests, and thereby promote the happiness of the whole community. He asserts that the administrators of every government, will ever be actuated by views of private interest and ambition, to the prejudice of the public good; that therefore the only effectual method to secure the rights of the people and promote their welfare, is to create an opposition of interests between the members of two distinct bodies, in the exercise of the powers of government,

and balanced by those of a third. This hypothesis supposes human wisdom competent to the task of instituting three co-equal orders in government, and a corresponding weight in the community to enable them respectively to exercise their several parts, and whose views and interests should be so distinct as to prevent a coalition of any two of them for the destruction of the third. Mr. Adams, although he has traced the constitution of every form of government that ever existed, as far as history affords materials, has not been able to adduce a single instance of such a government; he indeed says that the British constitution is such in theory, but this is rather a confirmation that his principles are chimerical and not to be reduced to practice. If such an organization of power were practicable, how long would it continue? Not a day—for there is so great a disparity in the talents, wisdom and industry of mankind, that the scale would presently preponderate to one or the other body, and with every accession of power the means of further increase would be greatly extended. The state of society in England is much more favorable to such a scheme of government than that of America. There they have a powerful hereditary nobility, and real distinctions of rank and interests; but even there, for want of that perfect equality of power and distinction of interests in the three orders of government, they exist but in name; the only operative and efficient check upon the conduct of administration, is the sense of the people at large.

Suppose a government could be formed and supported on such principles, would it answer the great purposes of civil society? If the administrators of every government are actuated by views of private interest and ambition, how is the welfare and happiness of the community to be the result of such jarring adverse interests?

Therefore, as different orders in government will not produce the good of the whole, we must recur to other principles. I believe it will be found that the form of government, which holds those entrusted with power in the greatest responsibility to their constituents, the best calculated for freemen. A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided. In such a government the people are the sovereign and their sense or opinion is the criterion of every public measure; for when

this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained in a simple structure of government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed on. If you complicate the plan by various orders, the people will be perplexed and divided in their sentiment about the source of abuses or misconduct; some will impute it to the senate, others to the house of representatives, and so on, that the interposition of the people may be rendered imperfect or perhaps wholly abortive. But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men (separating the executive and judicial) elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility; for then, whenever the people feel a grievance, they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended from a single legislature, and will the best secure the rights of the people.

Having premised this much, I shall now proceed to the examination of the proposed plan of government, and I trust, shall make it appear to the meanest capacity, that it has none of the essential requisites of a free government; that it is neither founded on those balancing restraining powers, recommended by Mr. Adams and attempted in the British constitution, or possessed of that responsibility to its constituents, which, in my opinion, is the only effectual security for the liberties and happiness of the people; but on the contrary, that it is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed.

I shall previously consider the extent of the powers intended to be vested in Congress, before I examine the construction of the general government.

It will not be controverted that the legislative is the highest delegated power in government, and that all others are subordinate to it. The celebrated Montesquieu establishes it as a maxim, that legislation neces-

sarily follows the power of taxation. By sect. 8, of the first article of the proposed plan of government, “the Congress are to have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States.” Now what can be more comprehensive than these words? Not content by other sections of this plan, to grant all the great executive powers of a confederation, and a standing army in Time of PEACE, that grand engine of oppression, and moreover the absolute control over the commerce of the United States and all external objects of revenue, such as unlimited imposts upon imports, etc., they are to be vested with every species of internal taxation; whatever taxes, duties and excises that they may deem requisite for the general welfare, may be imposed on the citizens of these states, levied by the officers of Congress, distributed through every district in America; and the collection would be enforced by the standing army, however grievous or improper they may be. The Congress may construe every purpose for which the State legislatures now lay taxes, to be for the general welfare, and thereby seize upon every object of revenue. The judicial power by Article 3d, sect. 1st, shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and 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, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

The judicial power to be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The objects of jurisdiction recited above are so numerous, and the shades of distinction between civil causes are oftentimes so slight, that it is more than probable that the State judicatories would be wholly superseded; for in contests about jurisdiction, the federal court, as the most

powerful, would ever prevail. Every person acquainted with the history of the courts in England, knows by what ingenious sophisms they have, at different periods, extended the sphere of their jurisdiction over objects out of the line of their institution, and contrary to their very nature; courts of a criminal jurisdiction obtaining cognizance in civil causes.

To put the omnipotency of Congress over the State government and judicatories out of all doubt, the 6th article ordains that “this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.”

By these sections the all-prevailing power of taxation, and such extensive legislative and judicial powers are vested in the general government, as must in their operation necessarily absorb the State legislatures and judicatories; and that such was in the contemplation of the framers of it, will appear from the provision made for such event, in another part of it (but that, fearful of alarming the people by so great an innovation, they have suffered the forms of the separate governments to remain, as a blind). By Article 1st, sect. 4th, “the times, places and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing senators.” The plain construction of which is, that when the State legislatures drop out of sight, from the necessary operation of this government, then Congress are to provide for the election and appointment of representatives and senators.

If the foregoing be a just comment, if the United States are to be melted down into one empire, it becomes you to consider whether such a government, however constructed, would be eligible in so extended a territory; and whether it would be practicable, consistent with freedom? It is the opinion of the greatest writers, that a very extensive country cannot be governed on democratical principles, on any other plan than a confederation of a number of small republics, possessing all the powers

of internal government, but united in the management of their foreign and general concerns.

It would not be difficult to prove, that anything short of despotism could not bind so great a country under one government; and that whatever plan you might, at the first setting out, establish, it would issue in a despotism.

If one general government could be instituted and maintained on principles of freedom, it would not be so competent to attend to the various local concerns and wants, of every particular district, as well as the peculiar governments, who are nearer the scene, and possessed of superior means of information; besides, if the business of the whole union is to be managed by one government, there would not be time. Do we not already see, that the inhabitants in a number of larger States, who are remote from the seat of government, are loudly complaining of the inconveniences and disadvantages they are subjected to on this account, and that, to enjoy the comforts of local government, they are separating into smaller divisions?

Having taken a review of the powers, I shall now examine the construction of the proposed general government. Article 1st, sect. 1st. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives." By another section, the President (the principal executive officer) has a conditional control over their proceedings. Sect. 2d. "The house of representatives shall be composed of members chosen every second year, by the people of the several States. The number of representatives shall not exceed one for every 30,000 inhabitants."

The senate, the other constituent branch of the legislature, is formed by the legislature of each State appointing two senators, for the term of six years.

The executive power by Article 2d, sect. 1st, is to be vested in a President of the United States of America, elected for four years: Sec. 2 gives him "power, by and with the consent of the senate to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint

ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law," etc. And by another section he has the absolute power of granting reprieves and pardons for treason and all other high crimes and misdemeanors, except in case of impeachment.

The foregoing are the outlines of the plan.

Thus we see, the house of representatives are on the part of the people to balance the senate, who I suppose will be composed of the better sort, the well born, etc. The number of the representatives (being only one for every 30,000 inhabitants) appears to be too few, either to communicate the requisite information of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers; the term for which they are to be chosen, too long to preserve a due dependence and accountability to their constituents; and the mode and places of their election not sufficiently ascertained, for as Congress have the control over both, they may govern the choice, by ordering the representatives of a whole State, to be elected in one place, and that too may be the most inconvenient.

The senate, the great efficient body in this plan of government, is constituted on the most unequal principles. The smallest State in the Union has equal weight with the great States of Virginia, Massachusetts or Pennsylvania. The senate, besides its legislative functions, has a very considerable share in the executive; none of the principal appointments to office can be made without its advice and consent. The term and mode of its appointment will lead to permanency; the members are chosen for six years, the mode is under the control of Congress, and as there is no exclusion by rotation, they may be continued for life, which, from their extensive means of influence, would follow of course. The President, who would be a mere pageant of State, unless he coincides with the views of the senate, would either become the head of the aristocratic junto in that body, or its minion; besides, their influence being the most predominant, could the best secure his re-election to office. And from his power of granting pardons, he might screen from punishment the most

treasonable attempts on the liberties of the people, when instigated by the senate.

From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a permanent aristocracy.

The framers of it, actuated by the true spirit of such a government, which ever abominates and suppresses all free enquiry and discussion, have made no provision for the liberty of the press, that grand palladium of freedom, and scourge of tyrants; but observed a total silence on that head. It is the opinion of some great writers, that if the liberty of the press, by an institution of religion or otherwise, could be rendered sacred, even in Turkey, that despotism would fly before it.

And it is worthy of remark that there is no declaration of personal rights, premised in most free constitutions; and that trial by jury in civil cases is taken away; for what other construction can be put on the following, viz: Article 3d, sect. 2d, "In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases above mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact." It would be a novelty in jurisprudence, as well as evidently improper, to allow an appeal from the verdict of a jury, on the matter of fact; therefore it implies and allows of a dismissal of the jury in civil cases, and especially when it is considered, that jury trial in criminal cases is expressly stipulated for, but not in civil cases.

But our situation is represented to be so critically dreadful, that, however reprehensible and exceptionable the proposed plan of government may be, there is no alternative between the adoption of it and absolute ruin.

My fellow citizens, things are not at that crisis; it is the argument of tyrants; the present distracted state of Europe secures us from injury on that quarter, and as to domestic dissensions, we have not so much to fear from them, as to precipitate us into this form of government, without

it is a safe and a proper one. For remember, of all possible evils, that of despotism is the worst and the most to be dreaded.

Besides, it cannot be supposed that the first essay on so difficult a subject, is so well digested as it ought to be; if the proposed plan, after a mature deliberation, should meet the approbation of the respective States, the matter will end; but if it should be found to be fraught with dangers and inconveniences, a future general Convention, being in possession of the objections, will be the better enabled to plan a suitable government.

Who's here so base, that would a bondman be?
 If any, speak; for him have I offended.
 Who's here so vile, that will not love his country?
 If any, speak; for him have I offended.

Julius Caesar, Act 3, Scene 2

CENTINEL.