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**Observations on the Proposed Constitution for
the United States of America.**

New York, 1788. 126 pp.

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OBSERVATIONS

ON THE PROPOSED

CONSTITUTION

FOR THE

United States of America,

Clearly shewing it to be a complete SYSTEM

OF

ARISTOCRACY AND TYRANNY,

AND

DESTRUCTIVE

OF THE

RIGHTS AND LIBERTIES

OF THE

PEOPLE

**PRINTED in the STATE OF NEW-YORK,
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OBSERVATIONS, &c.

[Although the following pieces were addressed to the inhabitants of Pennsylvania, &c, they are (in almost every respect) as applicable to this state, and to every other state in the union.]

The ADDRESS and REASONS of DISSENT of the MINORITY of the CONVENTION of the State of Pennsylvania to their Constituents.

IT was not until after the termination of the late glorious contest, which made the people of the United States an independent nation, that any defect was discovered in the present confederation. It was formed by some of the ablest patriots in America. It carried us successfully through the war; and the virtue and patriotism of the people, with their disposition to promote the common cause, supplied the want of power in Congress.

The requisition of Congress for the five per cent. impost was made before the peace, so early as the first of February, 1781, but was prevented taking effect by the refusal of one state; yet it is probable every state in the union would have agreed to this measure, at that period, had it not been for the extravagant terms in which it was demanded. The requisition was new moulded in the year 1783, and accompanied with an additional demand of certain supplementary funds for twenty-five years. Peace had now taken place, and the United States found themselves labouring under a considerable foreign and domestic debt, incurred during the war. The requisition of 1783, was commensurate with the interest of the debt, as it was then calculated; but it has been more accurately ascertained since that time. The domestic debt has been found to fall several millions of dollars short of the calculation, and it has lately been considerably diminished by large sales of the western lands. The states have been called on by Congress annually for supplies, until the general system of finance, proposed in 1783, should take place.

It was at this time that the want of an efficient federal government was first complained of, and that the powers vested in Congress were found to be inadequate to the procuring of the benefits that should result from the union. The impost was granted by most of the states, but many refused the supplementary funds; the annual requisitions were set at nought by some of the states, while others complied with them by legislative acts, but were tardy in their payments, and Congress found themselves incapable of complying with their engagements, and supporting the federal government. It was found, that our national character was sinking in the opinion of foreign nations. The Congress could make treaties of commerce, but could not enforce the observance of them. We were suffering from the restrictions of foreign nations, who had shackled our commerce, while we were unable to retaliate: and all now agreed that it would be advantageous to the union to enlarge the powers of Congress; that they should be enabled in the amplest manner to regulate commerce, and to lay and collect duties on the imports throughout the United States. With this view a convention was first proposed by Virginia, and finally recommended by Congress for the different states to appoint deputies to meet in convention, "for the purpose of revising and amending the present articles of confederation, so as to make them adequate to the exigencies of the union." This recommendation the legislatures of twelve states complied with so hastily as not to consult their constituents on the subject; and though the different legislatures had no authority from their constituents for the purpose, they probably apprehended the necessity would justify the measure; and none of them extended their ideas, at that time, further than "revising and amending the present articles of confederation." Pennsylvania, by the act appointing deputies, expressly confined their powers to this object, and though it is probable that some of the members of the assembly of that state had at that time in contemplation to annihilate the present confederation, as well as the constitution of Pennsylvania, yet the plan was not sufficiently matured to communicate it to the public.

The majority of the legislature of this commonwealth were at that time under the influence of the members from the city of Philadelphia. They agreed, that the deputies sent by them to conventions, should have no compensation for their services, which determination was calculated to prevent the election of any member who resided at a distance from the city. It was in vain for the minority to attempt electing delegates to the convention, who understood the circumstances and the feelings of the people, and had a common interest with them. They found a disposition in the leaders of the majority of the house to choose themselves and some of their dependents. The minority attempted to prevent this by agreeing to vote for some of the leading members, who they knew had influence enough to be appointed at any rate, in hopes of carrying with them some respectable citizens of Philadelphia, in whose principles and integrity they could have more confidence; but even in this they were disappointed, except in one member: the eighth member was added at a subsequent session of the assembly.

The continental convention met in the city of Philadelphia at the time appointed. It was composed of some men of excellent characters; of others, who were more remarkable for their ambition and cunning, than their patriotism; and of some who had been opponents to the constitution of this commonwealth. The convention sat upwards of four months. The doors were kept shut, and the members brought under the most solemn engagements of secrecy.* Some of those who opposed their going so far beyond their powers, retired, hopeless, from the convention; others had the firmness to refuse signing the plan altogether; and many who did sign it, did it not as a system they wholly approved, but as the best that could be then obtained, and notwithstanding the time spent on this subject, it is agreed on all hands to be a work of haste and accom-

While the gilded chains were forging in the secret conclave, the meaner instruments of despotism without,

* The journals of the conclave are still concealed.

were busily employed in alarming the fears of the people with dangers which did not exist, and exciting their hopes of greater advantages from the expected plan than even the best government on earth can produce.

The proposed plan had not many hours issued forth, from the womb of suspicious secrecy, until such as were prepared for the purpose, were carrying about petitions for people to sign, signifying their approbation of the system, and requesting the legislature to call a convention. While every measure was taken to intimidate the people against opposing it, the public papers teemed with the most violent threats against those who should dare to think for themselves, and tar and feathers were liberally promised to all those who would not immediately join in supporting the proposed government, be it what it would. Under such circumstances, petitions in favour of calling a convention, were signed by great numbers in and about the city, before they had leisure to read and examine the system, many of whom, now they are better acquainted with it, and have had time to investigate its principles, are heartily opposed to it. The petitions were speedily handed in to the legislature.

Affairs were in this situation, when on the 28th of September last, a resolution was proposed to the assembly by a member of the house who had been also a member of the federal convention, for calling a state convention, to be elected within ten days, for the purpose of examining and adopting the proposed constitution of the united states, though at this time the house had not received it from Congress. This attempt was opposed by a minority, who, after offering every argument in their power to prevent the precipitate measure, without effect, absented themselves from the house, as the only alternative left them, to prevent the measures taking place previous to their constituents being acquainted with the business. That violence and outrage which had been often threatened, was now justified; some of the members were seized the next day by a mob, collected for the purpose, and forcibly dragged to the house, and there detained by force, while the quorum of the legislature so formed, completed their resolution.

We shall dwell no longer on this subject, the people of Pennsylvania have been already acquainted therewith. We would only further observe, that every member of the legislature, previously to taking his seat, by solemn oath or affirmation, declares, "that they will not do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state." And that constitution which they are so solemnly sworn to support, cannot legally be altered but by a recommendation of the council of censors, who alone are authorized to propose alterations and amendments, and even these must be published at least six months, for the consideration of the people. The proposed system of government for the United States, if adopted, will alter, and may annihilate the constitution of Pennsylvania; and therefore the legislature had no authority whatever to recommend the calling a convention for that purpose. This proceeding could not be considered as binding on the people of this commonwealth. The house was formed by violence, some of the members composing it were detained by force, which alone would have vitiated any proceedings, to which they were otherwise competent; but had the legislature been legally formed, this business was absolutely without their power.

In this situation of affairs were the subscribers elected members of the convention of Pennsylvania. A convention called by a legislature in direct violation of their duty, and composed in part of members, who were compelled to attend for that purpose, to consider of a constitution proposed by a convention of the United States, who were not appointed for the purpose of framing a new form of government, but whose powers were expressly confined to altering and amending the present articles of confederation. Therefore the members of the
continental

† *The continental convention, in direct violation of the 13th article of confederation, have declared, "that the ratification of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same." Thus has the plighted faith of the states been*

continental convention, in proposing the plan, acted as individuals, and not as deputies from Pennsylvania; the assembly who called the state convention acted as individuals, and not as the legislature of Pennsylvania; nor could they, or the convention chosen on their recommendation, have authority to do any act or thing, that can alter or annihilate the constitution of Pennsylvania (both of which will be done by the new constitution) nor are their proceedings, in our opinion, at all binding upon the people.

The election for members of the convention was held at so early a period, and the want of information was so great, that some of us did not know of it until after it was over, and we have reason to believe, that great numbers of the people of Pennsylvania have not yet had an opportunity of sufficiently examining the proposed constitution. We apprehend that no change can take place that will affect the internal government or constitution of this commonwealth, unless a majority of the people should evidence a wish for such a change; but on examining the number of votes given for members of the present state convention, we find, that of upwards of seventy thousand freemen who are entitled to vote in Pennsylvania, the whole convention has been elected by about thirteen thousand voters, and though two-thirds of the members of the convention have thought proper to ratify the proposed constitution, yet those two-thirds were elected by the votes of only six thousand and eight hundred freemen.

In the city of Philadelphia, and some of the eastern counties, the junto that took the lead in the business agreed to vote for none but such as would solemnly promise to adopt the system *in toto*, without exercising their judgment. In many of the counties the people did not attend the elections, and they had not an opportunity of judging of the plan. Others did not consider themselves

been sported with! they had solemnly engaged that the confederation now subsisting should be invariably preserved by each of them, and the union thereby formed should be perpetual, unless the same should be altered by mutual consent.

bound by the call of a set of men who assembled at the State-house in Philadelphia, and assumed the name of the legislature of Pennsylvania; and some were prevented from voting by the violence of the party who were determined at all events to force down the measure. To such lengths did the tools of despotism carry their outrage, that in the night of the election for members of convention in the city of Philadelphia, several of the subscribers (being then in the city to transact your business) were grossly abused and insulted, while they were quiet in their lodgings, though they did not interfere, nor had any thing to do with said election; but, as they apprehend, because they were supposed to be adverse to the proposed constitution, and would not tamely surrender those sacred rights which you have committed to their charge.

The convention met, and the same disposition was soon manifested in considering the proposed constitution, that had been exhibited in every other stage of the business. We were prohibited by an express vote of the convention, from taking any question on the separate articles of the plan, and reduced to the necessity of adopting or rejecting *in toto*. It is true the majority permitted us to debate on each article, but restrained us from proposing amendments. They also determined not to permit us to enter on the minutes our reasons of dissent against the whole. Thus situated we entered on the examination of the proposed system of government, and found it to be such as we could not adopt, without, as we conceived, surrendering up your dearest rights. We offered our objections to the convention, and opposed those parts of the plan, which, in our opinion, would be injurious to you, in the best manner we were able; and closed our arguments by offering the following propositions to the convention:

First. The rights of conscience shall be held inviolable; and neither the legislative, executive, nor judicial powers of the united states, shall have authority to alter, abrogate, or infringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion.

Second. That in controversies respecting property,
and

and in suits between man and man, trial by jury shall remain as heretofore, as well in the federal courts, as in those of the several states.

Third. That in all capital and criminal prosecutions, a man has a right to demand the cause and nature of his accusation, as well in the federal courts as in those of the several states; to be heard by himself and counsel; to be confronted with the accusers and witnesses; to call for evidence in his favor, and a speedy trial by an impartial jury of his vicinage, without whose unanimous consent, he cannot be found guilty, nor can he be compelled to give evidence against himself; and that no man be deprived of his liberty, except by the law of the land, or the judgment of his peers.

Fourth. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

Fifth. That warrants, unsupported by evidence, whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are grievous and oppressive, and shall not be granted either by the magistrates of the federal government or others.

Sixth. That the people have a right to the freedom of speech, of writing and publishing their sentiments; therefore, the freedom of the press shall not be restrained by any law of the united states.

Seventh. The people have a right to bear arms for the defence of themselves and their own state or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people of any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military shall be kept under strict subordination to, and governed by the civil powers.

Eighth. The inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and on all other lands in the United States

States not enclosed, and in like manner to fish in all navigable waters and others not private property, without being restrained therein by any laws to be passed by the legislature of the United States.

Ninth. That no law shall be passed to restrain the legislatures of the several states from enacting laws for imposing taxes, except imposts and duties on goods imported or exported, and that no taxes, except imposts and duties on goods imported and exported, and postage on letters, shall be levied by the authority of Congress.

Tenth. That the house of representatives be properly increased in number; that elections shall remain free; that the several states shall have power to regulate the elections for senators and representatives, without being controuled either directly or indirectly by any interference on the part of Congress; and that elections of representatives be annual.

Eleventh. That the power of organizing, arming, and disciplining the militia (the manner of disciplining the militia to be prescribed by Congress) remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree.

That the sovereignty, freedom, and independency of the several states shall be retained, and every power, jurisdiction, and right, which is not by this constitution expressly delegated to the United States in Congress assembled.

Twelfth. That the legislative, executive, and judicial powers be kept separate; and to this end, that a constitutional council be appointed, to advise and assist the president, who shall be responsible for the advice they give; hereby the senators would be relieved from almost constant attendances; and also that the judges be made completely independent.

Thirteenth. That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed or made conformable to such treaty; neither shall any treaties be valid which are in contradiction to
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the constitution of the United States, or the constitutions of the several states.

Fourteenth. That the judiciary power of the United States shall be confined to cases affecting ambassadors, other public ministers, or consuls; to 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 different states, between citizens claiming lands under grants of different states, and between a state or the citizens thereof and foreign states; and in criminal cases, to such only as are expressly enumerated in the constitution; and that the United States in Congress assembled, shall not have power to enact laws, which shall alter the laws of descent and distribution of the effects of deceased persons, the titles of land or goods, or the regulation of contracts in the individual states.

After reading these propositions, we declared our willingness to agree to the plan, provided it was to amended as to meet those propositions, or something similar to them: and finally moved the convention do adjourn, to give the people of Pennsylvania time to consider the subject, and determine for themselves; but these were all rejected, and the final vote was taken, when our duty to you induced us to vote against the proposed plan, and to decline signing the ratification of the same.

During the discussion, we met with many insults, and some personal abuse; we were not even treated with decency, during the sitting of the convention, by the persons in the gallery of the house; however, we flatter ourselves, that in contending for the preservation of those invaluable rights you have thought proper to commit to our charge, we acted with a spirit becoming freemen, and being desirous that you might know the principles which actuated our conduct, and being prohibited from inserting our reasons of dissent on the minutes of the convention, we have subjoined them for your consideration, as to you alone we are accountable. It remains with you, whether you will think those inestimable privileges, which you have so ably contended for, should be sacrificed at the shrine of despotism, or whether

whether you mean to contend for them with the same spirit that has so often baffled the attempts of an aristocratic faction, to rivet the shackles of slavery on you, and you unborn posterity.

Our objections are comprised under three general heads of dissent, viz.

WE DISSENT, First, Because it is the opinion of the most celebrated writers on government, and confirmed by uniform experience, that a very extensive territory cannot be governed on the principles of freedom otherwise than by a confederation of republics, possessing all the powers of internal governments; but united in the management of their general and foreign concerns.

If any doubt could have been entertained of the truth of the foregoing principle, it has been fully removed by the concession of Mr. Wilson, one of the majority on this question, and who was one of the deputies in the late general convention. In justice to him we will give his own words; they are as follows, viz.

“ The extent of country for which the new constitution was required, produced another difficulty in the business of the federal convention. It is the opinion of some celebrated writers, that to a small territory, the democratical; to a middling territory (as Montesquieu has termed it) the monarchial; and to an extensive territory, the despotic form of government, is best adapted. Regarding, then, the wide and almost unbounded jurisdiction of the United States, at first view, the hand of despotism seemed necessary to controul, connect, and protect it; and hence the chief embarrassment rose. For we knew, that, although our constituents would cheerfully submit to the legislative restraints of a free government, they would shun at every attempt to shackle them with despotic power.” And again, in another part of his speech, he continues, “ Is it probable that the dissolution of the state governments, and the establishment of one consolidated empire, would be eligible in its nature, and satisfactory to the people in its administration? I think not, as I have given reasons to shew, that so extensive a territory could not be governed, connected, and preserved, but by the supremacy of despotic power.

All

All the exertions of the most potent emperors of Rome were not capable of keeping that empire together, which in extent was far inferior to the dominion of America."

We dissent, secondly, because the powers vested in Congress by this constitution, must necessarily annihilate and absorb the legislative, executive, and judicial powers of the several States, and produce from their ruins one consolidated government, which, from the nature of things, will be an iron-handed despotism, as nothing short of the supremacy of despotic sway could connect and govern these United States under one government.

As the truth of this position is of such decisive importance, it ought to be fully investigated, and if it is founded, to be clearly ascertained; for, should it be demonstrated, that the powers vested by this constitution in Congress, will have such an effect, as necessarily to produce one consolidated government, the question then will be reduced to this short issue, viz. whether satiated with the blessings of liberty; whether repenting of the folly of so recently asserting their unalienable rights, against foreign despots, at the expence of so much blood and treasure, and such painful and arduous struggles, the people of America are now willing to resign every privilege of freemen, and submit to the domination of an absolute government, that will embrace all America in one chain of despotism; or whether they will, with virtuous indignation, spurn at the shackles prepared for them, and confirm their liberties by a conduct becoming freemen?

That the new government will not be a confederacy of states, as it ought, but one consolidated government, founded upon the destruction of the several governments of the States, we shall now shew.

The powers of Congress, under the new constitution, are complete and unlimited over the purse and the sword, and are perfectly independent of, and supreme over, the State governments, whose intervention in these great points is entirely destroyed. By virtue of their power of taxation, Congress may command the whole, or any part of the property of the people. They may impose what impose upon

upon commerce; they may impose what land-taxes, poll-taxes, excises, duties on all written instruments, and duties on every other article that they may judge proper; in short, every species of taxation, whether of an external or internal nature, is comprised in section the 8th, of article the 1st, viz. "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."

As there is no one article of taxation reserved to the state governments, the Congress may monopolize every source of revenue, and thus indirectly demolish the state governments, for without funds they could not exist; the taxes, duties, and excises imposed by Congress may be so high as to render it impracticable to levy any further sums on the same articles; but whether this should be the case or not, if the state governments should presume to impose taxes, duties, or excises, on the same articles with Congress, the latter may abrogate and repeal the laws whereby they are imposed, upon the allegation that they interfere with the due collection of their taxes, duties, or excises, by virtue of the following clause, part of section 8th, article 1st, viz. "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."

The Congress might gloss over this conduct by construing every purpose for which the state legislatures now lay taxes to be for the "general welfare," and therefore of their jurisdiction.

And the supremacy of the laws of the United States, is established by article 6th, viz. "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, any thing in the constitution or laws of any state to the contrary notwithstanding." It has been alledged, that the words "pursuant to the constitution," are a restriction upon the authority of Congress; but when it is considered, that by other sections they are invested with every efficient power of government, and
which

which may be exercised to the absolute destruction of the state governments, without any violation of even the forms of the constitution, this seeming restriction, as well as every other restriction in it, appears to us to be nugatory and delusive, and only introduced as a blind upon the real nature of the government. In our opinion, "pursuant to the constitution." will be co-extensive with the will and pleasure of Congress, which, indeed, will be the only limitation of their powers.

We apprehend, that two co-ordinate sovereignties would be a solecism in politics. That therefore, as there is no line of distinction drawn between the general, and state governments; as the sphere of their jurisdiction is undefined, it would be contrary to the nature of things, that both should exist together; one or the other would necessarily triumph in the fullness of dominion. However, the contest could not be of long continuance, as the state governments are divested of every means of defence, and will be obliged, by "the supreme law of the land," to yield at discretion.

It has been objected to this total destruction of the state governments, that the existence of their legislatures is made essential to the organization of Congress; that they must assemble for the appointment of the senators and president general of the United States. True, the state legislatures may be continued for some years, as boards of appointment, merely, as they are divested of every other function; but the framers of the constitution, foreseeing that the people will soon be disgusted with this idle mockery of a government without power and usefulness, have made a provision for relieving them from the impopularity, in section 4th, of article 1st, viz. "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."

As Congress have the control over the time of the appointment of the president general, of the senators and of the representatives of the United States, they may prolong their existence in office, for life, by postponing the time of their election and appointment, from period to period, under various

various pretences, such as, an apprehension of invasion, the factious disposition of the people, or any other plausible pretence that the occasion may suggest: and having thus obtained life estates in the government, they may fill up the vacancies themselves, by their controul over the mode of appointment--with this exception in regard to the senators, that as the place of appointment for them, must, by the constitution, be in the particular state, they may depute somebody in the respective states, to fill up the vacancies in the senate, occasioned by death, until they can venture to assume it themselves. In this manner, may the only restriction in this clause be evaded. By virtue of the foregoing section, when the spirit of the people shall be gradually broken--when the general government shall be firmly established--and when a numerous standing army shall render opposition vain--the Congress may contrive the system of despotism, in renouncing all dependence on the people, by continuing themselves and children in the government.

The celebrated Montesquieu, in his Spirit of Laws, vol. I. p. 12, says; "that in a democracy, there can be no exercise of sovereignty, but by the suffrages of the people, which are their will: now the sovereign's will is the sovereign himself: the laws, therefore, which establish the right of suffrage, are fundamental to this government. In fact, it is as important to regulate, in a republic, in what manner, by whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern." The time, mode, and place of the election of representatives, senators, and president general of the United States, ought not to be under the controul of Congress, but fundamentally ascertained and established.

The new constitution, consistently with the plan of consolidation, retains no reservation of the rights and privileges of the state governments, which was made in the confederation of the year 1787, by article the 1st of the 1st section. Thus, each state retains its sovereignty, independence, and every power, jurisdiction, and right, which is not by this confederation, expressly delegated to the United States in Congress assembled."

The legislative power, vested in Congress by the foregoing

going recited sections, is so unlimited in its nature, that be so comprehensive and boundless in its exercise, that this alone would be amply sufficient to annihilate the state governments, and swallow them up in the grand vortex of general empire.

The judicial powers, vested in Congress, are also so various and extensive, that by legal ingenuity they may be extended to every case, and thus absorb the state judiciaries : and when we consider the decisive influence that a general judiciary would have over the civil polity of the several states, we do not hesitate to pronounce, that this power, unaided by the legislative, would effect a consolidation of the states under one government.

The powers of a court of equity, vested by this constitution in the tribunals of Congress---powers which do not exist in the state of Pennsylvania, unless so far as they can be incorporated with jury trial---would, in this state, greatly contribute to this event. The rich and wealthy suitor would eagerly lay hold of the infinite mazes, perplexities, and delays, which a court of chancery, with the appellate powers of the supreme court, in fact, as well as law, would furnish him with, and thus the poor man, being plunged in the bottomless pit of legal discussion, would drop his demand in despair.

In short, consolidation pervades the whole constitution. It begins with an annunciation that such was the intention. The main pillars of the fabric correspond with it : and the concluding paragraph is a confirmation of it. The preamble begins with the words, " We the people of the United States," which is the style of a compact between individuals entering into a state of society, and not that of a confederation of states. The other features of consolidation, we have before noticed.

Thus we have fully established the position, that the powers vested by this constitution in Congress, will effect a consolidation of the states under one government, which even the advocates of this constitution admit, could not be done without the sacrifice of all liberty.

We dissent, thirdly, because, if it were practicable to govern so extensive a territory as these United States include, on the plan of a consolidated government, consistent with the principles of liberty and the happiness

of the people, yet the construction of this constitution is not calculated to attain the object; for, independent of the nature of the case, it would of itself, necessarily produce a despotism, and that not by the usual gradations, but with the celerity that has hitherto only attended revolutions effected by the sword.

To establish the truth of this position, a cursory investigation of the principles and form of this constitution will suffice.

The first consideration that this review suggests, is the omission of a bill of rights, ascertaining and fundamentally establishing those inalienable and personal rights of men, without the full, free, and secure enjoyment of which, there can be no liberty, and over which it is not necessary for a good government to have the controul. The principal of which are, the rights of conscience, personal liberty, by the clear and unequivocal establishment of the writ of habeas corpus, jury trial in criminal and civil cases, by an impartial jury of the vicinage or county, with the common law proceedings, for the safety of the accused in criminal prosecutions, and the liberty of the press, that scourge of tyrants, and the grand bulwark of every other liberty and privilege. The stipulations heretofore made in favour of them, in the state constitutions, are entirely superseded by this constitution.

The legislature of a free country should be so formed as to have a competent knowledge of its constituents, and enjoy their confidence. To produce these essential requisites, the representation ought to be fair, equal, and sufficiently numerous to possess the same interests, feelings, opinions, and views, which the people themselves would possess, were they all assembled; and so numerous as to prevent bribery and undue influence; and so responsible to the people by frequent and fair elections, as to prevent their neglecting or sacrificing the views and interests of their constituents, to their own pursuits.

We will now bring the legislature, under this constitution, to the test of the foregoing principles, which will demonstrate, that it is deficient in every essential quality of a just and safe representation.

The house of representatives is to consist of sixty-five members

members ; that is, one for about every fifty thousand inhabitants, to be chosen every two years. Thirty-three members will form a quorum for doing business, and seventeen of these, being the majority, determine the sense of the house.

The senate, the other constituent branch of the legislature, consists of twenty-six members, being two from each state, appointed by their legislatures every six years ; fourteen senators make a quorum ; the majority of whom, eight, determines the sense of that body : except in judging on impeachments, or in making treaties, or in expelling a member, when two thirds of the senators present, must concur.

The president is to have the controul over the enacting of laws, so far as to make the concurrence of two thirds of the representatives and senators present necessary, if he should object to the laws.

Thus it appears, that the liberties, happiness, interests, and great concerns of the whole United States, may be dependent upon the integrity, virtue, wisdom, and knowledge of twenty-five or twenty-six men. How inadequate and unsafe a representation ! inadequate, because the sense and views of three or four millions of people, diffused over so extensive a territory, comprising such various climates, products, habits, interests, and opinions, cannot be collected in so small a body ; and besides, it is not a fair and equal representation of the people, even in proportion to its number : for the smallest state has as much weight in the senate as the largest ; and from the smallness of the number to be chosen for both branches of the legislature ; and from the mode of election and appointment, which is under the controul of Congress ; and from the nature of the thing, men of the most elevated rank in life, will alone be chosen. The other orders in society, such as farmers, traders, and mechanics, who all ought to have a competent number of their best informed men in the legislature, will be totally unrepresented.

The representation is unsafe, because in the exercise of such great powers and trusts, it is so exposed to corruption and undue influence, by the gift of the numerous places of honour and emolument, at the disposal of the

the executive ; by the arts and address of the great and designing, and by direct bribery.

The representation is moreover inadequate and unsafe, because of the long terms for which it is appointed, and the mode of its appointment, by which Congress may not only controul the choice of the people, but may so manage as to divest the people of this fundamental right, and become self-elected.

The number of members in the house of representatives may be increased to one for every thirty thousand inhabitants. But when we consider, that this cannot be done without the consent of the senate, who, from their share in the legislative, in the executive, and judicial departments, and permanency of appointment, will be the great efficient body in this government, and whose weight and predominancy would be abridged by an increase of the representatives, we are persuaded that this is a circumstance that cannot be expected. On the contrary, the number of representatives will probably be continued at sixty-five, although the population of the country may swell to treble what it now is ; unless a revolution should effect a change.

We have before noticed the judicial power, as it would effect a consolidation of the states into one government. We will now examine it, as it would affect the liberties and welfare of the people, supposing such a government were practicable and proper.

The judicial power, under the proposed constitution, is founded on the well known principles of the civil law, by which the judge determines both on law and fact, and appeals are allowed from the inferior tribunals to the Superior, upon the whole question ; so that facts, as well as law, would be re-examined, and even new facts brought forward in the court of appeals ; and to use the words of a very eminent civilian, " The cause is many times another thing before the court of appeals, than what it was at the time of the first sentence."

That this mode of proceeding is the one which must be adopted under this constitution, is evident from the following circumstances : First, that the trial by jury, which is the grand characteristic of the common law, is secured by the constitution, only in criminal cases,
Secondly,

Secondly, that the appeal both from law and fact is expressly established, which is utterly inconsistent with the principles of the common law, and trials by jury. The only mode in which an appeal from law and fact can be established, is, by adopting the principles and practice of the civil law; unless the United States should be drawn into the absurdity of calling and swearing juries, merely for the purpose of contradicting their verdicts, which would render juries contemptible, and worse than useless. Thirdly, that the courts to be established, would decide on all cases of law and equity, which is a well known characteristic of the civil law, and these courts would have cognisance not only of the laws of the United States, and of treaties, and of cases affecting ambassadors, but of all cases of admiralty and maritime jurisdiction, which last are matters belonging exclusively to the civil law, in every nation in Christendom.

Not to enlarge upon the loss of the invaluable right of trial by an unbiassed jury, so dear to every friend of liberty, the monstrous expence and inconveniencies of the mode of proceeding to be adopted, are such, as will prove intolerable to the people of this country. The lengthy proceedings of the civil law courts in the chancery of England, and in the courts of Scotland and France, are such, that few men of moderate fortunes can endure the expence of: the poor man must, therefore, submit to the wealthy. Length of purse will too often prevail against right and justice. For instance, we are told by the learned judge Blackstone, that a question only on the property of an ox, of the value of three guineas, originating under the civil law proceedings in Scotland, after many interlocutory orders and sentences below, was carried at length from the court of sessions, the highest court in that part of Great-Britain, by way of appeal, to the house of lords, where the question of law and fact was finally determined. He adds, that no pique or spirit could, in the court of king's bench, or common pleas, at Westminster, have given countenance to such a cause for a tenth part of the time, nor cost a twentieth part of the expence. Yet the costs, in the courts of king's bench, and common pleas, in England, are

are infinitely greater than those which the people of this country have ever experienced.

We abhor the idea of losing the transcendent privilege of trial by jury, with the loss of which, it is remarked by the same learned author, that in Sweden the liberties of the commons were extinguished by an aristocratic tenate : and that trial by jury, and the liberty of the people, went out together. At the same time, we regret the intolerable delay, the enormous expences, and infinite vexation, to which the people of this country will be exposed, from the voluminous proceedings of the courts of civil law, and especially from the appellate jurisdiction, by means of which, a man may be drawn from the utmost boundaries of this extensive country, to the seat of the supreme court of the nation, to contend, perhaps, with a wealthy and powerful adversary. The consequence of this establishment will be, an absolute confirmation of the power of aristocratical influence in the courts of justice : for the common people will not be able to contend or struggle against it.

Trial by jury, in criminal cases, may also be excluded, by declaring that the libeller, for instance, shall be liable to an action of debt for a specified sum, thus evading the common law prosecution by indictment and trial by jury. And the common course of proceeding against a ship for breach of revenue laws, by information (which will be classed among civil causes,) will, at the civil law, be classed within the resort of a court where no jury intervenes. Besides, the benefit of jury trial in cases of a criminal nature, which cannot be evaded, will be rendered of little value, by calling the accused to answer far from home, there being no provision that the trial be by a jury of the neighbourhood or country. Thus, an inhabitant of Pittsburgh, on a charge of a crime committed on the banks of the Ohio, may be obliged to defend himself at the side of the Delaware, and so vice versa.

To conclude this head : we observe, that the judges of the courts of Congress would not be independent, as they are not debarred from holding other offices, during the pleasure of the president and senate, and as they may derive their support, in part, from fees, alterable by the legislature.

The next consideration that the constitution presents, is the undue and dangerous mixture of the powers of government: the same body possessing legislative, executive, and judicial powers. The senate is a constituent branch of the legislature; it has judicial power in judging on impeachments, and in this case unites in some measure the characters of judge and party, as all the principal officers are appointed by the president-general, with the concurrence of the senate, and therefore they derive their offices in part from the senate. This may bias the judgments of the senators, and tend to screen great delinquents from punishment. And the senate has, moreover, various great executive powers, viz. in concurrence with the president-general, they form treaties with foreign nations, that they may controul and abrogate the constitutions and laws of the several states. Indeed, there is no power, privilege, or liberty of the state-governments; or of the people; but what may be affected by virtue of this power: for all treaties made by them, are to be the "supreme law of the land, any thing in the constitution or laws of any state notwithstanding."

And this great power may be exercised by the president and ten senators, being two thirds of fourteen, which is a quorum of that body. What an inducement would this offer to the ministers of foreign powers to compass, by bribery, such concessions as could not otherwise be obtained? It is the unvaried usage of all free states, whenever treaties interfere with the positive laws of the land, to make the intervention of the legislature necessary to give them operation. This became necessary, and was afforded by the parliament of Great-Britain, in consequence of the late commercial treaty between that kingdom and France. As the senate judges on impeachments, who is to try the members of the senate, for the abuse of this power? And none of the great appointments to office can be made without the consent of the senate.

Such various, extensive, and important powers, combined in one body of men, are inconsistent with all freedom. The celebrated Montesquieu tells us, that "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch

monarch or senate should enact tyrannical laws, or execute them in a tyrannical manner."

Again, "there is no liberty, if the powers of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul: for the judge would then be legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor. There would be an end of every thing, were the same man, or the same body of the nobles, or of the people, to exercise those three powers; that of enacting laws; that of executing the public resolutions; and that of judging the crimes or differences of individuals."

The president-general is dangerously connected with the senate. His coincidence with the views of the ruling junta in that body, is made essential to his weight and importance in the government, which will destroy all independency and purity in the executive department; and having the power of pardoning, without the concurrence of a council, he may screen from punishment the most treasonable attempts that may be made on the liberties of the people, when instigated by his coadjutors in the senate. Instead of this dangerous and improper mixture of the executive with the legislative and judicial, the supreme executive powers ought to have been placed in the president, with a small independent council, made personally responsible for every appointment to office, or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step.

We have before considered internal taxation, as it would affect the destruction of the state governments, and produce one consolidated government. We will now consider that subject as it affects the personal concerns of the people.

The power of direct taxation applies to every individual: as Congress, under this new government, is expressly vested with the authority of laying a capitation or poll-tax upon every person, to any amount. This is a tax, that, however oppressive in its nature, and

unequal in its operation, is certain as to its produce; and simple in its collection. It cannot be evaded, like the objects of impost or excise; and will be paid, because all that a man hath, will he give for his head. This tax is so congenial to the nature of despotism, that it has ever been a favourite under such governments. Some of those who were in the late general convention, from this state, have long laboured to introduce a poll-tax among us.

The power of direct taxation will further apply to every individual: as Congress may tax land, cattle, trades, occupations, &c. to any amount; and every object of internal taxation is of that nature, that, however oppressive, the people will have but this alternative, either to pay the tax, or let their property be taken, for all resistance will be vain. The standing army and select militia would enforce the collection.

For the moderate exercise of this power, there is no controul left in the state-governments, whose intervention is destroyed. No relief or redress of grievances can be extended, as heretofore, by them. There is not even a declaration of rights, to which the people may appeal for the vindication of their wrongs, in the courts of justice. They must, therefore, implicitly obey the most arbitrary laws: as the worst of them will be pursuant to the principles and form of the constitution: and that strongest of all checks upon the conduct of administration, responsibility to the people, will not exist in this government. The permanency of the appointments of senators and representatives, and the controul the Congress have over their election, will place them independent of the sentiments and resentment of the people: and the administration having a greater interest in the government, than in the community, there will be no consideration to restrain them from oppression and tyranny. In the government of this state, under the old confederation, the members of the legislature are taken from among the people; and their interests and welfare are so inseparably connected with those of their constituents, that they can derive no advantage from oppressive laws and taxes: for they would suffer in common with their fellow citizens; would partici-
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pate in the burdens they impose on the community, as they must return to the common level after a short period; and, notwithstanding every exertion of influence, every means of corruption, a necessary rotation excludes them from permanency in the legislature.

This large state is to have but ten members in that Congress, which is to have the liberty, property, and dearest concerns of every individual in this vast country, at absolute command: and even these ten persons, who are to be our only guardians—who are to supersede the legislature of Pennsylvania—will not be of the choice of the people, nor amenable to them. From the mode of their election and appointment, they will consist of the lordly and high minded—of men who will have no congenial feelings with the people, but a perfect indifference for, and contempt of them. They will consist of those harpies of power, that prey upon the very vitals—that riot on the miseries of the community. But we will suppose, although in all probability it may never be realized in fact, that our deputies in Congress have the welfare of their constituents at heart, and will exert themselves in their behalf, what security could even this afford? what relief could they extend to their oppressed constituents? To attain this, the majority of the deputies of the twelve other states in Congress must be alike well disposed—must alike forego the sweets of power—and relinquish the pursuits of ambition, which, from the nature of things, is not to be expected. If the people part with a responsible representation in the legislature, founded upon fair, certain, and frequent elections, they have nothing left they can call their own. Miserable is the lot of that people whose every concern depends on the will and pleasure of their rulers. Our soldiers will become janissaries, and our officers of government bashaws; in short, the system of despotism will soon be completed.

From the foregoing investigation, it appears, that the Congress, under this constitution, will not possess the confidence of the people, which is an essential requisite in a good government: for unless the laws command the confidence and respect of the great body of the people, so as to induce them to support them, when called

called on by the civil magistrate, they must be executed by the aid of a numerous standing army, which would be inconsistent with every idea of liberty: for the same force that may be employed to compel obedience to good laws, might, and probably would, be used to wrest from the people their constitutional liberties. The framers of this constitution appear to have been aware of this great deficiency; to have been sensible that no dependence could be placed on the people for their support; but, on the contrary, that the government must be executed by force. They have, therefore, made a provision for this purpose, in a permanent standing army, and a militia that may be subjected to as strict discipline and government.

A standing army, in the hands of a government placed so independent of the people, may be made a fatal instrument to overturn the public liberties. It may be employed to enforce the collection of the most oppressive taxes, and to carry into execution the most arbitrary measures. An ambitious man, who may have the army at his devotion, may step up to the throne, and seize upon absolute power.

The absolute unqualified command that Congress have over the militia, may be made instrumental to the destruction of all liberty, both public and private, whether of a personal, civil, or religious nature.

First: the personal liberty of every man, probably from sixteen to sixty years of age, may be destroyed by the power Congress have in organizing and governing the militia. As militia, they may be subjected to fines to any amount, levied in a military manner; they may be subjected to corporal punishments of the most disgraceful and humiliating kind, and to death itself, by the sentence of a court martial. To this our young men will be more immediately subjected: as a select militia, composed of them, will best answer the purposes of government.

Secondly: the rights of conscience may be violated: as there is no exemption of those persons, who are conscientiously scrupulous of bearing arms. There cannot be a more oppressive violation of the community in the land. This is also very remarkable, because, even

when the distresses of the late war, and the evident affliction of many citizens of that description, inflamed our passions—and when every person, who was obliged to risque his own life must have been exasperated against such as on any account kept back from the common danger—yet even then, when outrage and violence might have been expected, the rights of conscience were held sacred.

At this momentous crisis, the framers of our state constitution, made the most express and decided declaration and stipulation in favour of the rights of conscience: but now, when no necessity exists, those dearest rights of men are left insecure.

Thirdly: the absolute command of Congress over the militia, may be destructive of public liberty: for under the guidance of an arbitrary government, they may be made the unwilling instruments of tyranny. The militia of Pennsylvania, may be marched to New England, or Virginia, to quell an insurrection occasioned by the most galling oppression: and, aided by the standing army, they will, no doubt, be successful in subduing their liberty and independency: but in so doing, altho' the magna inity of their minds will be extinguished, yet the more passions of resentment and revenge will be increased, and these, in turn will be the ready and obedient instruments of despotism, to enslave the others; and that with an irritated vengeance. Thus may the militia be made the instruments of crushing the last efforts of expiring liberty, of riveting the chains of despotism on their fellow citizens, and on one another. This power can be exercised not only without violating the constitution, but in strict conformity with it. It is calculated for this express purpose, and will doubtless be executed accordingly.

As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burdensome government. The standing army must be numerous, and, as a further support, it will be the policy of this government to multiply officers in every department; judges, collectors, tax-gatherers, excise-men, and the whole host of revenue officers, will swarm over the land, devouring the hard earnings

earnings of the industrious; like the locusts of old, impoverishing and desolating all before them.

We have not noticed the smaller, nor many of the considerable blemishes, but have confined our objections to the great and essential defects—the main pillars of the constitution: which we have shown to be inconsistent with the liberty and happiness of the people, as its establishment will annihilate the state governments, and produce one consolidated government, that will eventually and speedily issue in the supremacy of despotism.

In this investigation, we have not confined our views to the interests or welfare of this state, in preference to the others. We have overlooked all local circumstances; we have considered this subject on the broad scale of the general good; we have asserted the cause of the present and future ages; the cause of liberty and mankind.

Nathaniel Breeding,

John Smilie,

Richard Baird,

Adam Orth,

John A. Hanna,

John Whitehill,

John Harris,

Robert Whitehill,

John Reynolds,

Jonathan Hoge,

Nicholas Lutz.

John Ludwig,

Abraham Lincoln,

John Bishop,

Joseph Heister,

Joseph Powell,

James Martin,

William Findley,

John Baird,

James Edgar,

William Todd,

Philadelphia, December 12, 1787.

**A LETTER of his Excellency EDMUND
RANDOLPH, Esq. on the FEDERAL
CONSTITUTION.**

*Addressed—To the Honorable the Speaker of the House of
Delegates, Virginia.*

Richmond, October 10, 1787.

S I R,

THE constitution, which I enclosed to the general assembly in a late official letter, appears without
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my signature. This circumstance, although trivial in its own nature, has been rendered rather important to myself at least, by being misunderstood by some, and misrepresented by others.—As I disdain to conceal the reasons for withholding my subscription, I have always been, still am, and ever shall be, ready to proclaim them to the world. To the legislature, therefore, by whom I was deputed to the federal convention, I beg leave now to address them: affording no indifference to public opinion, but resolved not to court it by an unmanly sacrifice of my own judgment.

As this explanation will involve a summary, but general review of our federal situation, you will pardon me, I trust, although I should transgress the usual bounds of a letter.

Before my departure for the convention, I believed, that the confederation was not so eminently defective, as it had been supposed. But after I had entered into a free communication with those who were best informed of the condition and interest of each state; after I had compared the intelligence derived from them, with the properties which ought to characterize the government of our union, I became persuaded, that the confederation was destitute of every energy, which a constitution of the United States ought to possess.

For the objects proposed by its institution were, that it should be a shield against foreign hostility, and a firm resort against domestic commotion; that it should cherish trade, and promote the prosperity of the states under its care.

But these are not among the attributes of our present union. Severe experience under the pressure of war—a ruinous weakness manifested since the return of peace; and the contemplation of these dangers, which darken the future prospect, have condemned the hope of grandeur and of safety under the auspices of the confederation.

In the exigencies of war, indeed, the history of its effects is but short; the final ratification having been delayed until the beginning of the year 1781. But however short, this period is distinguished by melancholy testimonies of its inability to maintain in harmony, the social intercourse of the states, to defend Congress against encroach-

ments on their rights, and to obtain, by requisitions, supplies to the federal treasury, or recruits to the federal armies. I shall not attempt an enumeration of the particular instances; but leave to your own remembrance and the records of Congress, the support of the assertions.

In the season of peace too, not many years have elapsed; and yet each of them has produced fatal examples of delinquency, and sometimes of pointed opposition to federal duties. To the various remonstrances of Congress, I appeal, for a gloomy, but unexaggerated narrative of the injuries which our faith, honor, and happiness, have sustained by the failure of the States.

But these evils are past; and some may be led by an honest zeal to conclude that they cannot be repeated. Yes sir, they will be repeated as long as the confederation exists, and will bring with them other mischiefs, springing from the same source, which cannot be yet foreseen in their full array of terror.

If we examine the constitution and laws of the several States, it is immediately discovered that the law of nations is unprovided with sanctions in many cases, which deeply affect public dignity and public justice. The letter however of the confederation does not permit Congress to remedy these defects, and such an authority, although evidently deducible from its spirit, cannot, without violation of the second article, be assumed. Is it not a political phenomenon, that the head of the confederacy should be doomed to be plunged into war, from its wretched impotency to check offences against this law; and sentenced to witness in unavailing anguish the infraction of their engagements to foreign sovereigns?

And yet this is not the only grievous point of weakness. After a war shall be inevitable, the requisitions of Congress for quotas of men or money, will again prove unproductive, and fallacious. Two causes will always conspire to this baneful consequence.

1. No government can be stable, which hangs on human inclination alone, unbiassed by the coercion; and 2, from the very connection between States bound to proportionate contributions, jealousies and suspicions naturally arise, which at least chill the ardour, if they do not excite the murmurs of the whole. I do not forget indeed, that by

one sudden impulse our part of the American continent has been thrown into a military posture, and that in the earlier annals of the war, our armies marched to the field on the mere recommendations of Congress. But ought we to argue from a contest, thus signalized by the magnitude of its stake, that as often as a flame shall be hereafter kindled, the same enthusiasm will fill our legions, or renew them, as they may be filled by losses?

If not, where shall we find protection? Impressions, like those, which prevent a compliance with requisitions of regular forces, will deprive the American republic of the services of militia. But let us suppose, that they are attainable, and acknowledge, as I always shall, that they are the natural support of a free government. When it is remembered, that in their absence agriculture must languish; that they are not habituated to military exposures and the rigour of military discipline, and that the necessity of holding in readiness successive detachments, carries the expence far beyond that of enlistments—this resource ought to be adopted with caution.

As strongly too am I persuaded, that the requisitions for money will not be more cordially received. For besides the distrust, which would prevail with respect to them also; besides the opinion, entertained by each state of its own liberality and unsatisfied demands against the United States, there is another consideration, not less worthy of attention. The first rule for determining each quota the value of all lands granted or surveyed, and of the buildings and improvements thereon. It is no longer doubted, that an equitable, uniform mode of estimating that value, is impracticable; and therefore twelve states have substituted the number of inhabitants under certain limitations, as the standard according to which money is to be furnished. But under the subsisting articles of the union, the assent of the thirteenth state is necessary, and has not yet been given. This does of itself lessen the hope of procuring a revenue for federal uses; and the miscarriage of the impost almost rivets our despondency.

Amidst these disappointments, it would afford some consolation, if when rebellion shall threaten any state,

an ultimate asylum could be found under the wing of Congress. But it is at least equivocal whether they can intrude forces into a state, rent asunder by civil discord, even with the purest solicitude for our federal welfare, and on the most urgent entreaties of the state itself. Nay the very allowance of this power would be pageantry alone, from the want of money and of men.

To these defects of congressional power, the history of man has subjoined others, not less alarming. I earnestly pray, that the recollection of common sufferings, which terminated in common glory, may check the sallies of violence, and perpetuate mutual friendship between the states. But I cannot presume, that we are superior to those unsocial passions, which under like circumstances have infested more ancient nations. I cannot presume, that through all time, in the daily mixture of American citizens with each other, in the conflicts for commercial advantages, in the discontents which the neighbourhood of territory has been seen to engender in other quarters of the globe, and in the efforts of faction and intrigue—thirteen distinct communities under no effective superintending controul (as the United States confessedly now are, notwithstanding the bold terms of the confederation) will avoid a hatred to each other deep and deadly.

In the prosecution of this enquiry, we shall find the general prosperity to decline under a system thus unnerved. No sooner is the merchant prepared for foreign ports, with the treasures which this new world kindly offers to his acceptance, than it is announced to him, that they are shut against American shipping, or opened under oppressive regulations. He urges Congress to a counter-policy, and is answered only by a condolence on the general misfortune. He is immediately struck with the conviction, that until exclusion shall be opposed to exclusion, and restriction to restriction, the American flag will be disgraced. For who can conceive, that thirteen legislatures, viewing commerce under different regulations, and fancying themselves discharged from every obligation to concede the smallest of their commercial advantages for the benefit of the whole, will be wrought into a concert of action and defiance

defiance of every prejudice ? Nor is this all : Let the great improvements be recounted, which have enriched and illustrated Europe : Let it be noted, how few those are, which will be absolutely denied to the United States, comprehending within their boundaries the choicest blessings of climate, soil, and navigable waters ; then let the most sanguine patriot banish, if he can, the mortifying belief, that all these must sleep, until they shall be roused by the vigour of a national government.

I have not exemplified the preceding remarks by minute details ; because they are evidently fortified by truth, and the consciousness of the United States of America. I shall, therefore, no longer deplore the unsuitableness of the confederation to secure our peace ; but proceed, with a truly unaffected distrust of my own opinions, to examine what order of powers the government of the United States ought to enjoy ? How they ought to be defended against encroachments ? Whether they can be interwoven in the confederation, without an alteration of its very essence, or must be lodged in new hands ? Shewing at the same time the convulsions, which seem to await us, from a dissolution of the union or partial confederacies.

To mark the kind and degree of authority, which ought to be confided to the government of the United States, is no more than to reverse the description which I have already given, of the defects of the confederation.

From thence it will follow, that the operations of peace and war will be clogged without regular advances of money, and that these will be slow indeed, if dependent on supplication alone. For what better name do requisitions deserve, which may be evaded or opposed without the fear of coercion ? But although coercion is an indispensable ingredient, it ought not to be directed against a state, as a state ; it being impossible to attempt it except by blockading the trade of the delinquent, or carrying war into its bowels. Even if these violent schemes were eligible, in other respects, both of them might perhaps be defeated by the scantiness of the public chest ; would be tardy in their complete ef-

fect, as the expence of the land and naval equipments must be first reimbursed; and might drive the proscribed state into the desperate resolve of inviting foreign alliances. Against each of them lie separate unconquerable objections. A blockade is not equally applicable to all the states, they being differently circumstanced in commerce and in ports; nay, an excommunication from the privilege of the union would be vain, because every regulation or prohibition may be easily eluded under the rights of American citizenship, or of foreign nations. But how shall we speak of the intrusion of troops? Shall we arm citizens against citizens, and habituate them to shed kindred blood? Shall we risque the inflicting of wounds which will generate a rancour never to be subdued? Would there be no room to fear, that an army accustomed to fight, for the establishment of authority, would salute an Emperor of their own? Let us not bring these things into jeopardy. Let us rather substitute the same process by which individuals are compelled to contribute to the government of their own states. Instead of making requisitions to the legislatures it would appear more proper, that taxes should be imposed by the federal head, under due modifications and guards; that the collectors should demand from the citizens their respective quotas, and be supported as in the collection of ordinary taxes.

It follows too, that, as the general government will be responsible to foreign nations, it ought to be able to annul any offensive measure, or enforce any public right. Perhaps among the topics on which they may be aggrieved or complain, the commercial intercourse, and the manner in which contracts are discharged, may constitute the principal articles of clamour.

It follows too, that the general government ought to be the supreme arbiter, for adjusting every contention among the states. In all their connections, therefore, with each other, and particularly in commerce, which will probably create the greatest discord, it ought to hold the reins.

It follows too, that the general government ought to protect each state against domestic as well as external violence.

And

And lastly, it follows, that through the general government alone, can we ever assume the rank to which we are entitled by our resources and situation.

Should the people of America surrender these powers, they can be paramount to the constitutions and ordinary acts of legislation, only by being delegated by them. I do not pretend to affirm, but I venture to believe, that if the confederation had been solemnly questioned in opposition to our constitution, or even to one of our laws, posterior to it, it must have given way. For never did it obtain a higher ratification, than a resolution of assembly in the daily form.

This will be one security against encroachment. But another not less effectual is, to exclude the individual states from any agency in the national government, as far as it may be safe, and their interposition may not be absolutely necessary.

But now, Sir, permit me to declare, that in my humble judgment, the powers by which alone the blessings of a general government can be accomplished, cannot be interwoven in the confederation, without a change in its very essence, or, in other words, that the confederation must be thrown aside. This is almost demonstrable, from the inefficacy of requisitions, and from the necessity of converting them into acts of authority. My suffrage, as a citizen, is also for additional powers. But to whom shall we commit these acts of authority, these additional powers? To Congress? When I formerly lamented the defects in the jurisdiction of Congress, I had no view to indicate any other opinion, than that the federal head ought not to be so circumscribed. For free as I am at all times to profess my reverence for that body, and the individuals who compose it, I am yet equally free to make known my aversion to repose such a trust in a tribunal so constituted. My objections are not the visions of theory, but the result of my own observations in America, and of the experience of others abroad.

1. The legislative and executive are concentrated in the same persons. This, where real power exists, must eventuate in tyranny.
2. The representation of the states bears no proportion to their importance. This is an unreasonable subjection of the will of the majority to that

that of the minority. 3. The mode of election, and the liability of being recalled, may too often render the delegates rather partizans of their own states than representatives of the Union. 4. Cabal and intrigue must consequently gain an ascendancy in a course of years. 5. A single house of legislation, will sometimes be precipitate, perhaps passionate. 6. As long as seven states are required for the smallest, and nine for the greatest votes, may not foreign influence at some future day insinuate itself, so as to interrupt every active exertion? 7. To crown the whole, it is scarce within the verge of possibility, that so numerous an assembly should acquire that secrecy, dispatch, and vigour, which are the test of excellence in the executive department.

My inference from these facts and principles, is, that the new powers must be deposited in a new body, growing out of a consolidation of the union, as far as the circumstances of the states will allow. Perhaps, however, some may mediate its dissolution, and others, partial confederacies.

The first is an idea awful indeed, and irreconcilable with a very early, and hitherto uniform conviction, that without union, we must be undone. For, before the voice of war was heard, the pulse of the then colonies was tried, and found to beat in unison. The unremitting labour of our enemies was to divide, and the policy of every Congress, to bind us together. But in no example was this truth more clearly displayed, than in the prudence with which independence was unfolded to the light, and in the forbearance to declare it, until America almost unanimously called for it. After we had thus launched into troubles, never before explored, and in the hour of heavy distress, the remembrance of our social strength, not only forbade despair, but drew from Congress the most illustrious repetition of their settled purpose to despise all terms, short of independence.

Behold, then, how successful and glorious we have been, while we acted in fraternal concord. But let us discard the illusion, that by this success, and this glory, the crest of danger has irrecoverably fallen. Our governments are yet too youthful to have acquired stability

bility from habit. Our very quiet depends upon the duration of the union. Among the upright and intelligent, few can read without emotion the future fate of the states, if severed from each other. Then shall we learn the full weight of foreign intrigue. Then shall we hear of partitions of our country. If a prince, inflamed by the lust of conquest, should use one state as the instrument of enslaving others—if every state is to be wearied by perpetual alarms, and compelled to maintain large military establishments—if all questions are to be decided by an appeal to arms, where a difference of opinion cannot be removed by negotiation—in a word, if all the direful misfortunes which haunt the peace of rival nations, are to triumph over the land, for what have we to contend? why have we exhausted our wealth? why have we basely betrayed the heroic martyrs of the federal cause?

But dreadful as the total dissolution of the union is to my mind, I entertain no less horror at the thought of partial confederacies. I have not the least ground for supposing, that an overture of this kind would be listened to by a single state, and the presumption is, that the politics of the greater part of the states, flow from the warmest attachment to an union of the whole. If, however, a lesser confederacy could be obtained by Virginia, let me conjure my countrymen, well to weigh the probable consequences, before they attempt to form it.

On such an event, the strength of the union would be divided in two, or perhaps three parts. Has it so increased since the war as to be divisible—and yet remain sufficient for our happiness?

The utmost limit of any partial confederacy, which Virginia could expect to form, would comprehend the three southern states, and her nearest northern neighbour. But they, like ourselves, are diminished in their real force, by the mixture of an unhappy species of population.

Again may I ask, whether the opulence of the United States has been augmented since the war? This is answered in the negative, by a load of debt, and the declension of trade.

At all times must a southern confederacy support ships of war, and soldiery? As soon would a navy move from the forest, and an army spring from the earth, as such a confederacy, indebted, impoverished, in its commerce, and destitute of men, could, for some years at least, provide an ample defence for itself.

Let it not be forgotten, that nations, which can enforce their rights, have large claims against the United States, and that the creditor may insist on payment from any of them. Which of them would probably be the victim? The most productive, and the most exposed. When vexed by reprisals or war, the southern states will sue for alliance on this continent or beyond sea. If for the former, the necessity of an union of the whole is decided; if for the latter, America will, I fear, re-act the scenes of confusion and bloodshed, exhibited among most of those nations, which have, too late, repented the folly of relying on auxiliaries.

Two or more confederacies cannot but be competitors for power. The ancient friendship between the citizens of America, being thus cut off, bitterness and hostility will succeed in its place; in order to prepare against surrounding danger, we shall be compelled to vest some where or other power approaching near to military government.

The annals of the world have abounded so much with instances of a divided people being a prey to foreign influence, that I shall not restrain my apprehensions of it, should our union be torn asunder. The opportunity of insinuating it, will be multiplied in proportion to the parts into which we may be broken.

In short, Sir, I am fatigued with summoning up to my imagination the miseries which will harrass the United States, if torn from each other, and which will not end until they are superseded by fresh mischiefs under the yoke of a tyrant.

I come, therefore, to the last, and perhaps only refuge in our difficulties, a consolidation of the union, as far as circumstances will permit. To fulfil this desirable object, the constitution was framed by the federal convention. A quorum of eleven states, and the only member from a twelfth have subscribed it; Mr. Mason of Virginia, Mr. Gerry of Massachusetts, and myself having refused to subscribe.

Why

Why I refused, will, I hope, be soived to the satisfaction of those who know me, by saying, that a sense of duty commanded me thus to act. It commanded me, Sir, for believe me, that no event of my life ever occupied more of my reflection. To subscribe, seemed to offer no inconsiderable gratification, since it would have presented me to the world as a fellow-labourer with the learned and zealous statesmen of America.

But it was far more interesting to my feelings, that I was about to differ from three of my colleagues, one of whom is, to the honour of the country which he has saved, embosomed in their affections, and can receive no praise from the highest l-fire of language; the other two of whom have been long en-c-olled among the wisest and best lovers of the commonwealth; and the unshaken and intimate friendship of all of whom I have ever prized, and still do prize, as among the happiest of all acquisitions. I was no stranger to the reigning partiality for the members who composed the convention, and had not the smallest doubt, that from this cause, and from the ardor for a reform of government, the first applauses at least would be loud and profuse. I suspected, too, that there was something in the human breast which for a time would be apt to construe a temper, terous in politics, into an enmity to the union. Nay, I plainly foresaw, that in the dissentions of parties, a middle line would probably be interpreted into a want of ent-prise and decision. But these considerations, how reducing justice, were feeble opponents to the suggestions of my conscience. I was sent to exercise my judgment, and to exercise it was my fixed determination; being instructed by even an imperfect acquaintance with mankind, that self-approbation is the only true reward which a political career can bestow, and that popularity would have been but another name for perfidy, if to secure it, I had given up the freedom of thinking for myself.

It would have been a peculiar pleasure to me to have ascertained before I left Virginia, the temper and genius of my fellow citizens, considered relatively to a government, so substantially differing from the confederation as that which is now submitted. But this was, for many obvious reasons, impossible; and I was thereby deprived of what I thought: the necessary guides.

I saw, however, that the confederation was tottering from its own weakness, and that the sitting of the convention was a signal of its total insufficiency. I was therefore ready to assent to a scheme of government, which was proposed, and which went beyond the limits of the confederation, believing, that without being too extensive it would have preserved our tranquility, until that temper and that genius should be collected.

But when the plan which is now before the general assembly, was on its passage through the convention, I moved, that the state conventions should be at liberty to amend, and that a second general convention should be holden, to discuss the amendments, which should be suggested by them. This motion was in some measure justified by the manner in which the confederation was forwarded originally, by congress to the state legislatures, in many of which amendments were proposed, and those amendments were afterwards examined in Congress. Such a motion was doubly expedient here as the delegation of so much more power was sought for. But it was negatived. I then expressed my unwillingness to sign. My reasons were the following :

1. It is said in the resolutions which accompany the constitution, that it is to be submitted to a convention of delegates chosen in each state by the people thereof, for their assent and ratification. The meaning of these terms is allowed universally to be, that the convention must either adopt the constitution in the whole, or reject it in the whole, and is positively forbidden to amend. If therefore, I had signed, I should have felt myself bound to be silent as to amendments, and to endeavor to support the constitution without the correction of a letter. With this consequence before my eyes, and with a determination to attempt an amendment, I was taught, by a regard for consistency, not to sign.

2. My opinion always was, and still is, that every citizen of America, let the crisis be what it may, ought to have a full opportunity to propose, through his representatives, any amendment which, in his apprehension, tends to the public welfare. By signing, I should have contradicted this sentiment.

3. A constitution ought to have the hearts of the
people

people on its side. But if at a future day it should be burthensome after having been adopted in the whole, and they should insinuate that it was in some measure forced upon them, by being confined to the single alternative of taking or rejecting it altogether, under my impressions, and with my opinions, I should not be able to justify myself had I signed.

4. I was always satisfied, as I have now experienced, that this great subject would be placed in new lights and attitudes by the criticism of the world, and that no man can assure himself how a constitution will work for a course of years, until at least he shall have heard the observations of the people at large. I also fear more from inaccuracies in a constitution, than from gross errors in any other composition; because our dearest interests are to be regulated by it; and power, if loosely given, especially where it will be interpreted with great latitude, may bring sorrow in its execution. Had I signed with these ideas, I should have virtually shut my ears against the information which I ardently desired.

5. I was afraid, that if the constitution was to be submitted to the people, to be wholly adopted or wholly rejected by them, they would not only reject it, but bid a lasting farewell to the union. This formidable event I wished to avert, by keeping myself free to propose amendments, and thus, if possible, to remove the obstacles to an effectual government. But it will be asked, whether all these arguments were not well weighed in convention. They were, Sir, with great candor. Nay, when I called to mind the respectability of those, with whom I was associated, I almost lost confidence in these principles. On other occasions, I should cheerfully have yielded to a majority; on this, the fate of thousands, yet unborn, enjoined me not to yield until I was convinced.

Again, may I be asked, why the mode pointed out in the constitution for its amendment, may not be a sufficient security against its imperfections, without now arresting it in its progress? My answers are, 1. That it is better to amend, while we have the constitution in our power, while the passions of designing men are not yet enlisted, and while a bare majority of the States may amend

amend, than to wait for the uncertain assent of three fourths of the states. 2. That a bad feature in government, becomes more and more fixed every day. 3. That frequent changes in a constitution, even if practicable, ought not to be wished, but avoided as much as possible. And 4. That in the present case, it may be questionable, whether, after the particular advantages of its operation shall be discerned, three fourths of the states can be induced to amend.

I confess, that it is no easy talk, to devise a scheme which shall be suitable to the views of all. Many expedients have occurred to me, but none of them appear less exceptionable than this; that if our convention should chuse to amend, another federal convention be recommended: that in that federal convention the amendments proposed by this or any other state be discussed; and if incorporated in the constitution or rejected, or if a proper number of the other states should be unwilling to accede to a second convention, the constitution be again laid before the same state conventions, which shall again assemble on the summons of the executives, and it shall be either wholly adopted, or wholly rejected, without a further power of amendment. I count such a delay as nothing, in comparison with so grand an object; especially too as the privilege of amending must terminate after the use of it once.

I should now conclude this letter, which is already too long, were it not incumbent on me, from having contended for amendments, to set forth the particulars, which I conceive to require correction. I undertake this with reluctance: because it is remote from my intentions to catch the prejudices or prepossessions of any man. But as I mean only to manifest that I have not been actuated by caprice, and now to explain every objection at full length would be an immense labour, I shall content myself with enumerating certain heads, in which the constitution is most repugnant to my wishes.

The two first points are the equality of suffrage in the senate, and the submission of commerce to a mere majority in the legislature, with no other check than the revision of the president. I conjecture that neither of these things can be corrected; and particularly the former

former, without which we must have risen perhaps in disorder.

But I am sanguine in hoping that in every other justly obnoxious cause, Virginia will be seconded by a majority of the States. I hope that she will be seconded,

1. In causing all ambiguities of expression to be precisely explained.
2. In rendering the president ineligible after a given number of years.
3. In taking from him the power of nominating to the judiciary officers, or of filling up vacancies which there may happen during the recesses of the senate, by granting commissions which shall expire at the end of their next sessions.
4. In taking from him the power of pardoning for treason at least before conviction.
5. In drawing a line between the powers of Congress and individual States; and in defining the former, so as to leave no clashing of jurisdictions nor dangerous disputes; and to prevent the one from being swallowed up by the other, under cover of general words, and implication.
6. In abridging the power of the senate to make treaties supreme laws of the land.
8. In incapacitating the Congress to determine their own salaries.
- And 9. In limiting and defining the judicial power.

The proper remedy must be consigned to the wisdom of the convention; and the final step which Virginia shall pursue, if her overtures shall be discarded, must also rest with them.

You will excuse me, Sir, for having been thus tedious. My feelings and duty demanded this exposition; for through no other channel could I rescue my omission to sign from misrepresentation, and no more effectual way could I exhibit to the general assembly an unreserved history of my conduct.

I have the honor, Sir, to be with great respect, your most obedient servant,

EDMUND RANDOLPH.

C E N T I N E L.

To the PEOPLE of PENNSYLVANIA.

N U M B E R I.

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 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 for ever. 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 foundation 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, "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 of *freedom of speech* and of *publishing your sentiments*. How long these 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

private opinion, and call upon others for theirs ; and if I use my power, the boldness of a freeman, it is because I know that *the liberty of the press yet remains unviolated and juries yet uncorrupted.*

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 Pennsylvania, 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, and its own intrinsic merit, the only criterion of your patronage. If ever free and unbiassed 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. It is 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,

gent, that there exists not that great reluctance to innovation, so remarkable in old communities, 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 favourable 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, immediate 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 aggrandisement. 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 practised on in the other.

I am fearful that the principles of government inculcated in Mr. Adams's 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's sine qua non of a good government is three balancing powers, whose repelling qualities
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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 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 favourable 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 interests 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 intrusted 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 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 sentiments 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 thus 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 ballancing restraining powers, recommended by Mr. Adams and attempted in the British constitution, or possessed of
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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 therefore 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 necessarily follows the power of taxation. By section 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 defence 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, &c. 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 1st section of article 3d, 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, and to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty
and

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, any thing 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

governments to remain, as a blind. By section 4th of the 1st art. "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, the 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 any thing 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 near 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 inconveniencies 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

amine the construction of the proposed general government.

Art. 1, sect. 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." By an other section, the president (the principal executive officer) has a conditional controul over their proceedings.

Sect. 2. " 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 Art. 2, sect. 1, is to be vested in a president of the United States of America, elected for four years : section 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, &c. 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 cases of impeachment.

The foregoing is 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*, &c. The number of the representatives (being only one for every 30,000) 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

for as Congress have the controul 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 controul 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

most free constitutions ; and that the trial by jury in civil cases is taken away ; for what other construction can be put on the following, viz. Art. 3. sect. 2. " In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a 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 OF-
FENDED.**

**" WHO'S HERE SO VILE, THAT WILL NOT
LOVE HIS COUNTRY ?**

**" IF ANY, SPEAK ; FOR HIM HAVE I OF-
FENDED."**

CENTINEL.

C E N T I N E L.

To the PEOPLE of PENNSYLVANIA.

N U M B E R II.

Friends, Countrymen, and fellow-citizens,

AS long as the liberty of the press continues unviolated, and the people have the right of expressing and publishing their sentiments upon every public measure, it is next to impossible to enslave a free nation. The state of society must be very corrupt and base indeed, when the people, in possession of such a monitor as the press, can be induced to exchange the heaven-born blessings of liberty, for the galling chains of despotism. Men of an aspiring and tyrannical disposition, sensible of this truth, have ever been inimical to the press, and have considered the shackling of it, as the first step towards the accomplishment of their hateful domination, and the entire suppression of all liberty of public discussion, as necessary to its support. For even a standing army, that grand engine of oppression, if it were as numerous as the abilities of any nation could maintain, would not be equal to the purposes of despotism over an enlightened people.

The abolition of that grand palladium of freedom, the liberty of the press, in the proposed plan of government, and the conduct of its authors, and patrons, is a striking exemplification of these observations. The reason assigned for the omission of a *bill of rights*, securing the *liberty of the press*, and other invaluable personal rights, is an insult on the understanding of the people.

The injunction of secrecy imposed on the members of the late Convention during their deliberation, was obviously dictated by the genius of aristocracy; it was deemed impolitic to unfold the principles of the intended government to the people, as this would have frustrated the object in view.

The projectors of the new plan, supposed that an ex parte discussion of the subject, was more likely to obtain unanimity in the Convention; which would give it such a sanction

in the public opinion, as to banish all distrust, and lead the people into an implicit adoption of it without examination.

The greatest minds are forcibly impressed by the immediate circumstances with which they are connected; the particular sphere men move in, the prevailing sentiments of those they converse with, have an insensible and irresistible influence on the wisest and best of mankind, so that when we consider the abilities, talents, ingenuity, and consummate address of a number of the members of the late convention, whose principles are despotic, can we be surprised that men of the best intentions have been misled in the difficult science of government? It is derogating from the character of the illustrious and highly revered WASHINGTON, to suppose him fallible on a subject that must be in a great measure novel to him? As a patriotic hero, he stands unequalled in the annals of time.

The new plan was accordingly ushered to the public with such a splendor of names, as inspired the most unlimited confidence; the people were disposed to receive upon trust, without any examination on their part, what would have proved either a blessing or a curse to them and their posterity. What astonishing insatiation! to stake their happiness on the wisdom and integrity of any set of men! In matters of infinitely smaller concern, the dictates of prudence are not disregarded! The celebrated Montesquieu, in his Spirit of Laws, says, that "slavery is ever preceded by sleep." And again, in his account of the rise and fall of the Roman empire, page 97, "That it may be advanced as a general rule, that in a free state, whenever a perfect claim is visible, the spirit of liberty no longer subsists." And Mr. Dickenson, in his Farmer's Letters, No. XI, lays it down as a maxim, that "A perpetual jealousy respecting liberty is absolutely requisite in all free states."

*"Happy are the men, and happy the people, who grow
"wise by the misfortunes of others. Earnestly, my dear
"countrymen, do I beseech the author of all good gifts,
"that you may grow wise in this manner, and I beg leave
"to recommend to you in general, as the best method of
"obtaining this wisdom, diligently to study the histories
"of other countries. You will there find all the arts that
"can possibly be practised by cunning rulers or false patri-*

“ots among yourselves, so fully delineated, that changing names, the account would serve for your own times.”

A few citizens in Philadelphia (too few, for the honor of human nature) who had the wisdom to think *consideration* ought to precede *approbation*, and the fortitude to avow that they would take time to judge for themselves on so momentous an occasion, were stigmatized as enemies to their country; as monsters, whose existence ought not to be suffered, and the destruction of them and their houses recommended as meritorious. The authors of the new plan, conscious that it would not stand the test of enlightened patriotism, tyrannically endeavoured to preclude all investigation. If their views were laudable—if they were honest—the contrary would have been their conduct, they would have invited the freest discussion. Whatever specious reasons may be assigned for secrecy during the framing of the plan, no good one can exist, for leading the people blindfold into the implicit adoption of it. Such an attempt does not augur the public good. It carries on the face of it an intention to juggle the people out of their liberties.

The virtuous and spirited exertions of a few patriots, have, at length, roused the people from their fatal infatuation, to a due sense of the importance of the measure before them. The glare and fascination of names is rapidly abating, and the subject begins to be canvassed on its own merits; and so serious and general has been the impression of the objections urged against the new plan, on the minds of the people, that its advocates, finding mere declamation and scurrility will no longer avail, are reluctantly driven to defend it on the ground of argument. Mr. *Wilson*, one of the deputies of this state in the late convention, has found it necessary to come forward. From so able a lawyer, and so profound a politician, what might not be expected, if this new act of convention be the heavenly dispensation which some represent it. Its divinity would certainly be illustrated by one of the principal instruments of the Revelation; for this gentleman has that transcendent merit! But if on the other hand, this able advocate has failed to vindicate it from the objections of its adversaries, must we not

not consider it as the production of *frail* and *interested* men.

Mr. *Wilson* has recourse to the most flimsy sophistry in his attempt to refute the charge that the new plan of general government will supercede and render powerless the state governments. His quibble upon the term *corporation*, as sometimes equivalent to communities which possess sovereignty, is unworthy of him. The same comparison in the case of the British parliament assuming to tax the colonies, is made in the Xth of the Farmer's Letters, and was not misunderstood in 1768 by any. He says, that the existence of the proposed federal plan depends on the existence of the state governments, as the senators are to be appointed by the several legislatures, who are also to nominate the electors who choose the president of the United States; and that hence all fears of the several states being melted down into one empire, are groundless and imaginary. But who is so dull as not to comprehend, that the *semblance* and *forms* of an ancient establishment, may remain, after the *reality* is gone. *Augustus*, by the aid of a great army, assumed despotic power, and notwithstanding this, we find even under Tiberius, Caligula, and Nero, princes who disgraced human nature by their excesses, the shadows of the ancient constitution held up to amuse the people. The senate sat as formerly; consuls, tribunes, of the people, censors and other officers, were annually chosen as before, and the forms of republican government continued. Yet all this was in *appearance* only. Every *senatus consultum* was dictated by him or his ministers, and every Roman found himself constrained to submit in all things to the despot.

Mr. *Wilson* asks, "What controul can proceed from the federal government to shackle or destroy that *sacred palladium* of national freedom, the *liberty of the press*?" What? cannot Congress, when possessed of the immense authority, proposed to be devolved, restrain the printers, and put them under regulation. Recollect that the omnipotence of the federal legislature over the state establishments is recognized by a special article, viz. "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, any thing in the *constitutions* or laws of any state to the contrary notwithstanding." After such a declaration, what security does the *constitutions* of the several states afford for the *liberty of the press, and other invaluable personal rights*, not provided for by the new plan? Does not this sweeping clause subject every thing to the controul of Congress?

In the plan of confederation of 1778, now existing, it was thought proper by article the 2d, to declare, that "each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled." *Positive* grant was not then thought sufficiently descriptive and restraining upon Congress, and the omission of such a declaration now, when such great devolutions of power are proposed, manifests the design of reducing the several states to shadows. But Mr. *Wilson* tells you that every right and power not specially granted to Congress is considered as withheld. How does this appear? Is this principle established by the proper authority? Has the convention made such a stipulation? By no means. Quite the reverse; the laws of Congress are to be "the *supreme law* of the land, any thing in the *constitutions* or laws of any state to the contrary notwithstanding," and consequently, would be *paramount* to all state authorities. The lust of power is so universal, that a speculative unascertained rule of construction would be a *poor* security for the liberties of the people.

Such a body as the intended Congress, unless particularly inhibited and restrained; must grasp at omnipotence, and before long swallow up the legislative, the executive, and the judicial powers of the several states.

In addition to the respectable authorities quoted in my first number, to shew that the right of *taxation* includes all the powers of government, I beg leave to adduce the Farmer's Letters, see particularly letter 9th, in which Mr. *Dickenson* has clearly proved, that if the British parliament assumed the power of taxing the colonies, *internally*, as well as *externally*, and it should be
submitted

submitted to, the several colony legislatures would soon become contemptible, and before long fall into disuse. Nothing, says he, would be left for them to do, higher than to frame bye-laws for empounding of cattle, or the yoking of hogs.

By the proposed plan, there are divers cases of judicial authority to be given to the courts of the United States, besides the two mentioned by Mr. *Wilson*. In maritime causes about property, jury trial has not been usual; but in suits in equity, with all due deference to Mr. *Wilson's* professional abilities (which he calls to his aid) jury trial, as to facts, is in full exercise. Will this jurisperitus say, that if the question in equity should be, did *John Doe* make a will, that the chancellor of England would decide upon it? He well knows, that in this case, there being no mode of jury trial before the chancellor, the question would be referred to the court of king's bench for discussion according to the common law, and when the judge in equity should receive the verdict, the fact so established, could never be re-examined or controverted. Maritime causes, and those appertaining to a court of equity, are, however, but two of the many and extensive subjects of federal cognizance mentioned in the plan. This jurisdiction will embrace all suits arising under the laws of impost, excise, and other revenue of the United States. In England, if goods be seized, if a ship be prosecuted for non-compliance with, or breach of the laws of the customs, or those for regulating trade, in the court of exchequer, the claimant is secured of the transcendant privilege of Englishmen, *trial by a jury of his peers*. Why not in the United States of America? This jurisdiction also goes to all cases under the laws of the United States, that is to say, under all statutes and ordinances of Congress. How far this may extend, it is easy to foresee; for upon the decay of the state powers of legislation, in consequence of the loss of the *purse strings*, it will be found necessary for the federal legislature to make laws upon every subject of legislation.— Hence the state courts of justice, like the barony and hundred courts of England, will be eclipsed, and gradually fall into disuse.

The jurisdiction of the federal court goes, likewise, to the

the laws to be created by treaties made by the president and senate (a species of legislation) with other nations ; to all cases affecting foreign ministers and consuls ; to controversies wherein the United States shall be a party ; to controversies between citizens of different states," as when an inhabitant of *New-York* has a demand on an inhabitant of *New-Jersey*. This last is a very invidious jurisdiction, implying an improper distrust of the impartiality and justice of the tribunals of the states. It will include all legal debates between foreigners in Britain or elsewhere, and the people of this country. A reason hath been assigned for it, viz. " That large tracts of land, in neighbouring states, are claimed under royal or other grants, disputed by the states where the lands lie, so that justice cannot be expected from the state tribunals." Suppose it were proper indeed to provide for such case, why include all cases, and for all time to come ? Demands as to lands for 21 years would have satisfied this. A London merchant shall come to America, and sue for his supposed debt, and the citizen of this country shall be deprived of jury trial, and subjected to an appeal (though nothing but the *fact* is disputed) to a court 500 or 1000 miles from home ; when if this American has a claim upon an inhabitant of England, his adversary is secured of the privilege of jury trial. This jurisdiction goes also to controversies between any state and its citizens, which though probably not intended, may hereafter be set up as a ground to divest the states, severally, of the trial of criminals ; inasmuch as every charge of felony and misdemeanour, is a controversy between a state and the citizens of the same : that is to say, the state is plaintiff, and the party accused is defendant in the prosecution. In all debts about jurisprudence, as was observed before, the paramount courts of Congress will decide, and the judges of the state, being *sub graviore lege*, under the paramount law, must acquiesce.

Mr. *Wilson* says, that it would have been impracticable to have made a general rule for jury trial in the civil cases assigned to the federal judiciary, because of the want of uniformity in the mode of jury trial as practised by the several states. This objection proves

too much, and therefore amounts to nothing. If it precludes the mode of common law in civil cases, it certainly does in criminal. Yet in these we are told, "the oppression of government is effectually barred, by declaring, that in all criminal cases *trial by jury* shall be preserved." Astonishing, that provision could not be made for a jury in civil controversies, of 12 men, whose verdict should be unanimous, *to be taken from the vicinage*; a precaution which is omitted as to trial of crimes, which may be any where in the state within which they have been committed. So that an inhabitant of *Kentucky* may be tried for treason at *Richmond*.

The abolition of jury trial in civil cases, is the more considerable, as at length the courts of Congress will supersede the state courts, when such mode of trial will fall into disuse among the people of the United States.

The northern nations of the European continent, have all lost this invaluable privilege: *Sweden*, the last of them, by the artifices of the *aristocratic* senate, which depressed the king, and reduced the house of commons to insignificance. But the nation, a few years ago, preferring the absolute authority of a monarch to the *vexatious* domination of the *well-born* few, an end was suddenly put to their power.

"The policy of this right of juries (says judge Blackstone) to decide upon *fact*, is founded on this: that if the power of judging were entirely trusted with the magistrates, or any select body of men named by the executive authority, their decisions, in spite of their own natural integrity, would have a bias towards those of their own rank and dignity; for it is not to be expected, that the *few* should be attentive to the rights of the many. This, therefore, preserves in the hands of the people, that share which they ought to have in the administration of justice, and prevents the encroachments of the more powerful and wealthy citizens."

The attempt of governor *Golden*, of New-York, before the revolution, to re-examine the *facts*, and to reconsider the *damages*, in the case of *Forscy* against *Cunningham*, produced, about the year 1764, a flame of patriotic and successful opposition, that will not be easily forgotten

To manage the various and extensive judicial authority, proposed to be vested in Congress, there will be one or more inferior courts immediately requisite in each state; and laws and regulations must be forthwith provided to direct the judges; here is a wide door for inconvenience to enter. Contracts made under the acts of the states respectively, will come before courts acting under new laws and new modes of proceeding, not thought of when they were entered into. An inhabitant of Pennsylvania, residing at Pittsburgh, finds the goods of his debtor, who resides in Virginia, within the reach of his attachment; but no writ can be had to authorise the marshal, sheriff, or other officer of Congress to seize the property about to be removed, nearer than 200 miles: suppose that at Carlisle, for instance, such a writ may be had, mean while the object escapes. Or if an inferior court, whose judges have ample salaries, be established in every county, would not the expence be enormous? Every reader can extend in his imagination, the instances of difficulty which would proceed from this needless interference with the judicial rights of the separate states, and which, as much as any other circumstance in the new plan, implies that the dissolution of their forms of government is designed.

Mr. *Wilson* skips very lightly over the danger apprehended from the standing army allowed by the new plan. This grand machine of power and oppression may be made a fatal instrument to overturn the public liberties, especially, as the funds to support the troops may be granted for *two* years, whereas in Britain, the grants ever since the revolution in 1688, have been *from year to year*. A standing army with regular provision of pay and contingencies, would afford a strong temptation to some ambitious man to step up into the throne, and to seize absolute power. The keeping on foot a hired military force *in time of peace*, ought not to be gone into, unless *two thirds* of the members of the federal legislature agree to the necessity of the measure, and adjust the numbers employed. Surely Mr. *Wilson* is not serious when he adduces the instance of the troops now stationed on the Ohio as a proof of the propriety

of a standing army. They are a mere occasional armament for the purpose of restraining divers hostile tribes of savages. It is contended, that under the present confederation, Congress possess the power of raising armies at pleasure ; but the opportunity which the states severally have of withholding the supplies necessary to keep these armies on foot, is a sufficient check on the *present* Congress.

Mr. *Wilson* asserts, that never was charge made with less reason, than that which predicts the institution of a *baneful aristocracy* in the federal senate. In my first number, I stated, that this body would be a very unequal representation of the several states, that the members being appointed for the long term of six years, and there being no exclusion by rotation, they might be continued for life, which would follow of course from their extensive means of influence, and that possessing a considerable share in the *executive* as well as *legislative*, it would become a *paramount aristocracy*, and swallow up the other orders in the government.

That these fears are not imaginary, a knowledge of the history of other nations, where the powers of government have been injudiciously placed, will fully demonstrate. Mr. *Wilson* says, “ the senate branches into two characters ; the one legislative and the other executive. In its legislative character it can effect no purpose without the co-operation of the house of representatives, and in its executive character it can accomplish no object without the concurrence of the president. Thus fettered, I do not know any act which the senate can of itself perform, and such dependence necessarily precludes every idea of influence and superiority.” This I confess is very specious, but experience demonstrates, that checks in government, unless accompanied with *adequate* power, and *independently* placed, prove *merely nominal*, and will be *inoperative*. Is it probable, that the president of the United States, limited as he is in power, and dependent on the will of the senate, in appointments to office, will either have the firmness or inclination to exercise his prerogative of a conditional controul upon the proceedings of that body, however injurious they may be to the public welfare : it will be his interest to coincide

coincide with the views of the senate, and thus become the head of the aristocratic junto. The king of England is a constituent part of the legislature, but although an hereditary monarch, in possession of the whole executive power, including the unrestrained appointment to offices, and an immense revenue, enjoys but in *name* the prerogative of a negative upon the parliament. Even the king of England, circumstanced as he is, has not dared to exercise it for near a century past. The check of the house of representatives upon the senate will likewise be rendered nugatory for want of due weight in the democratic branch, and from their constitution, *they* may become so *independent* of the *people* as to be indifferent of its interests : nay, as Congress would have the controul over the mode and place of their election, by ordering the representatives of a *whole* state to be elected at *one* place, and that too the most *inconvenient*, the ruling power may govern the *choice*, and thus the house of representatives may be composed of the *creatures* of the senate. Still the *semblance* of checks, may remain, but without *operation*.

This mixture of the legislative and executive moreover highly tends to corruption. The chief improvement in government, in modern times, has been the complete separation of the great distinctions of power ; placing the *legislative* in different hands from those which hold the *executive* ; and again severing the *judicial* part from the ordinary *administrative*. " When the legislative and executive powers (says Montesquieu) are united in the same person, or in the same body of magistrates, there can be no liberty."

Mr. *Wilson* confesses himself not satisfied with the organization of the federal senate, and apologizes for it, by alledging a sort of compromise. It is well known that some members of convention, apprized of the mischiefs of such a compound of authority, proposed to assign the supreme executive powers to the president and a small council, made personally responsible for every appointment to office, or other act, by having their opinions recorded ; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step. Such a check
upon.

upon the chief magistrate would admirably secure the power of pardoning, now proposed to be exercised by the president alone, from abuse. For as it is placed, he may shelter the traitors whom he himself, or his coadjutors in the senate, have excited to plot against the liberties of the nation.

The delegation of the power of taxation to Congress as far as duties on imported commodities, has not been objected to. But to extend this to excises, and every species to internal taxation, would necessarily require so many ordinances of Congress, affecting the body of the people, as would perpetually interfere with the state laws and personal concerns of the people. This alone would directly tend to annihilate the particular governments; for the people, fatigued with the operations of two masters, would be apt to rid themselves of the weaker. But we are cautioned against being alarmed with imaginary evils, for Mr. *Wilson* has predicted that the great revenue of the United States, will be raised by impost. Is there any ground for this? Will the imposts supply the sums necessary to pay the interest and principal of the foreign loan, to defray the great additional expence of the new constitution; for the policy of the new government will lead it to institute numerous and lucrative civil offices, to extend its influence and provide for the swarms of expectants, the people having in fact no controul upon their disbursements, and to afford pay and support the supposed standing army, that darling and long wished for object of the *well born* of America; and which, if we may judge from the principles of the intended government, will be no trifling establishment, for cantonments of troops in every district of America, will be necessary to compel the submission of the people to the arbitrary dictates of the ruling powers? I say will the impost be adequate? By no means. To answer these there must be excises and other indirect duties imposed, and as land taxes will operate too unequal; to be agreeable to the wealthy aristocracy in the senate who will be possessed of the government, *poll taxes* will be substituted as provided for in the new plan for the doctrine then will be, *that slaves ought to pay for wearing their heads.*

As the taxes necessary for these purposes, will drain your pockets of every penny, what is to become of that virtuous and meritorious class of citizens the public creditors. However well disposed the people of the United States may be to do them justice, it would not be in their power: and, *after waiting year after year*, without prospect of the payment of the interest or principal of the debt, they will be constrained to sacrifice their certificates in the purchase of waste lands in the distant wilds of the western territory.

From the foregoing illustration of the powers to be devolved to Congress, it is evident that the general government would necessarily annihilate the particular governments, and that the security of the personal rights of the people by the state constitutions is superseded and destroyed; hence results the necessity of such security being provided for by a bill of rights to be inserted in the new plan of federal government. What excuse can be then made for the omission of this grand palladium, this barrier between *liberty* and *oppression*. For universal experience demonstrates the necessity of the most express declarations and restrictions, to protect the rights and liberties of mankind, from the silent, powerful and ever active conspiracy of those who govern.

The new plan, it is true, does propose to secure the people of the benefit of personal liberty by the *habeas corpus*; and trial by jury for all crimes, except in cases of impeachment but there is no declaration, that all men have a natural and unalienable right to worship almighty God, according to the dictates of their own conscience and understanding; and that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to, or against his own free will and consent; and that no authority can or ought to be vested in, or assumed by any power whatever that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship; that the trial by jury in civil causes as criminal prosecutions shall be held sacred; that the requiring of excessive bail, imposing of excessive fines and cruel and unusual punishments be forbidden; that

monopolies

monopolies in trade or arts, other than to authors of books or inventors of useful arts, for a reasonable time, ought not to be suffered; that the right of the people to assemble peaceably for the purpose of consulting about public matters, and petitioning or remonstrating to the federal legislature ought not to be prevented; that *the liberty of the press be holden sacred*; that the people have a right to hold themselves, their houses, papers, and possessions, free from search or seized; and that therefore warrants, without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or his property, not particularly described, are contrary to that right and ought not to be granted; and that standing armies in time of peace are dangerous to liberty, and ought not to be permitted but when absolutely necessary; all which is omitted to be done in the proposed government.

But Mr. *Wilson* says, the new plan does not arrogate perfection, for it provides a mode of alteration and correction, if found necessary. This is one among the numerous deceptions attempted on this occasion. True there is a mode prescribed for this purpose. But it is barely possible that amendments may be made. The fascination of power must first cease, the nature of mankind undergo a revolution, that is not to be expected on this side of eternity. For to effect this (Art. 9.) it is provided, that if *two thirds* of both houses of the federal legislature shall propose them; or when two thirds of the several states, by their legislatures, shall apply for them the federal assembly shall call a convention for proposing amendments, which when ratified by three-fourths of the state legislatures, or conventions, as Congress shall see best, shall controul and alter the proposed confederation. Does history abound with examples of a voluntary relinquishment of power, however injurious to the community? No; it would require a general and successful rising of the people to effect any thing of this nature.—This provision therefore is more sound.

The opposition of the new plan (says Mr. *Wilson*) proceeds from interested men, viz. the officers of the state governments.