

In considering the respective powers of the President, the Senate and the House of Representatives, under the federal constitution, we have seen a part of the wholesome precautions, which are contained in the new system. Let us examine what further securities for the safety and happiness of the people are contained in the general stipulations and provisions.

The United States guarantee to every state in the union a separate republican form of government. From thence it follows, that any man or body of men, however rich or powerful, who shall make an alteration in the form of government of any state, whereby the powers thereof shall be attempted [434] *tempted to be taken out of the hands of the people at large, will stand guilty of high treason; or should a foreign power seduce or overawe the people of any state, so as to cause them to vest in the families of any ambitious citizens or foreigners the powers of hereditary governors, whether as Kings or Nobles, that such investment of powers would be void in itself, and every person attempting to execute them would also be guilty of treason.*

No religious test is ever to be required of any officer or servant of the United States. The people may employ any wise and good citizen in the execution of the various duties of the government. In Italy, Spain and Portugal, no protestant can hold a public trust. In England every presbyterian, and other person not of their established church, is incapable of holding an office. No such impious deprivation of the rights of men can take place under the new federal constitution. The convention has the honor of proposing the first public act, by which any nation has ever disinterestedly of a power, every exercise of which is a trespass on the Majesty of Heaven.

No qualification in *monied or landed property* is required by the proposed plan nor does it admit any preference from the preposterous distinctions of birth and rank. The office of the President, a Senator, and a Representative, and every other place of power or profit, are therefore open to the whole body of the people. Any wise, informed and upright man, be his property what it may, can exercise the trusts and powers of the state, provided he possesses the moral, religious and political virtues which are necessary to secure the confidence of his fellow citizens.

The importation of slaves from any foreign country is, by a clear implication, held up to the world as equally inconsistent with the dispositions and the duties of the people of America. A solid foundation is laid for exploding the principles of negro slavery, in which many good men of all parties in Pennsylvania, and throughout the union, have already concurred. The temporary reservation of any particular matter must ever be deemed an admission that it should be done away. This appears to have been well understood. In addition to the arguments drawn from liberty, justice and religion, opinions against this practice, founded in sound policy, have no doubt been urged. Regard was necessarily paid to the peculiar situation of our southern fellow-citizens; but they, on the other hand, have not been assembled of the delicate situation of our national character on this subject.

The people will remain, under the proposed constitution, the fountain of power and public honor. The President, the Senate, and House of Representatives, will be the channels through which the stream will flow—but it will flow from the people, and from them only. Every office, religious, civil and military, will be either their immediate gift, or it will come from them through the hands of their servants. And this, as observed before, will be guaranteed to them under the state constitutions which [435] they respectively approve; for they cannot be any form, cannot be aristocratical, but must be republican.

The people of those states which have faithfully discharged their duty to the union will be no longer subjected alone to the weight of the public debts. Proper arrangements will call forth the just proportion of their sister states, and our national character will be as unimpaired, as it was ever called. Elevation to independence, with the loss of our good name, is only to be ominous in disgrace. The liberties of a people involved in debt, are as uncertain as the liberty of an individual in the same situation. Their virtue is more precarious. The unfortunate citizen must yield to the operation of the laws, while a bankrupt nation too easy annihilates the sacred obligations of gratitude and honor, and becomes *extraneous and infamous*. I cannot refrain from reminding my fellow-citizens of our new approach to that deplorable situation, which must be our miserable condition, if the defects of the old confederation remain without amendment. The proposed constitution will cure the evil, and restore us to our rank among mankind.

Laws, made after the commission of the fact, have been a dreadful engine in the hands of tyrannical governors. Some of the most virtuous and shining characters in the world have been put to death, by laws formed to render them punishable, for parts of their conduct which *innocent permitted*, and to which *justice implied* them. These have been called *ex post facto* laws, and are exploded by the new system. If a time of public contention shall hereafter arrive, the firm and ardent friends to liberty may know the length to which they can push their noble opposition, on the foundation of the laws. Should their country's cause impel them further, they will be acquainted with the hazard, and using those arms which Providence has put into their hands, will make a solemn appeal to "the power above."

The destruction of the ancient republics was occasioned in every instance by their being ignorant of a great political position, which was left for America to discover and establish. Self-evident as the truth appears, we find no friend to liberty in ancient Greece or Rome asserting, that *taxation and representation were inseparable*. The Roman citizens, proud of their own liberty, imposed, in the best times of the commonwealth, the most grievous burdens on their wretched provinces. At other times we find thousands of their citizens, tho' residing within the walls of Rome, deprived of legislative representatives. When America asserted the *new truth*, Great-Britain, tho' boasting herself as *alone free* among the modern nations, denied it by her legislation, and endeavored to reduce it by her arms—the reasoning of tyrants. But the attempt was vain, for the noise of truth was heard above the thunder of the war, and reached the ears of all nations. Henceforth the people of the earth will consider this position as the only rock on which they can found the temple of liberty, that *taxation and representation are inseparable*. Our new constitution carries [434] it into execution on the most enlarged and liberal scale, for a Representative will be chosen by six thousand of his fellow-citizens, a Senator by half a sovereign state, a President by a whole nation.

The old federal Constitution contained many of the same things, which from error or disingenuousness are urged against the new one. Neither of them have a bill of rights, nor does either notice the liberty of the press, because they are already provided for by the State Constitutions; and relating only to personal rights, they could not be mentioned in a contract among sovereign states.

Both the old and new federal constitutions, and indeed the constitution of Pennsylvania, admit of courts in which no use is made of a jury. The board of property, the court of admiralty, and the high court of errors and appeals, in the state of Pennsylvania, as also the court of appeals under the old confederation, exclude juries. *Trials by jury will therefore lie in the express words of the Pennsylvania constitution, "in heretofore,"—almost always used, though sometimes omitted. Trials for lands lying in any state between persons residing in such state, for bonds, notes, book debts, contracts, trespasses, assumpsits, and all other matters between two or more citizens of any state, will be held in the state courts by juries, as now. In these cases, the federal courts cannot interfere. But when a dispute arises between the citizens of any state about lands lying out of the bounds thereof or when a trial is to be had between the citizens of any state and those of another, or the government of another, the private citizen will not be obliged to go into a court constituted by the state, with which, or with the citizens of which, his dispute is; he can appeal to a disinterested federal court. This is surely a great advantage, and promises and an impartial judgment.*

The trial by jury is not excluded in these federal courts. In all criminal cases, where the property, liberty or life of the citizen is at stake, he has the benefit of a jury. If convicted on impeachment, which is never done by a jury in any country, he cannot be fined, imprisoned or punished, but only may be disqualified from doing public mischief by losing his office, and his capacity to hold another. If the nature of his offense, besides its danger to his country, should be criminal in itself—should involve a charge of fraud, murder or treason—he may be tried for such crime, but cannot be convicted without a jury. In trials about property in the federal courts, which can only be as above stated, there is nothing in the new constitution to prevent a trial by jury. No doubt it will be made in every case, where it is practicable. This will be adjusted by law, and it could not be done otherwise. In short, the sphere of jurisdiction for the federal courts is limited, and that sphere only is subject to the regulations of our federal government. The known principles of justice, the attachment to trial by jury whenever it can be used, the instructions of the state legislatures, the instructions of the people at large, the operation of the federal regulations on the property of a president, a senator, a [435] representative, a judge, as well as on that of a private citizen, will certainly render those regulations as favorable as possible to property, for life and liberty are put more than ever into the hands of the juries. Under the present constitution of all the states, a public officer may be condemned to imprisonment or death on impeachment, without a jury; but the new federal constitution protects the accused, till he shall be convicted, from the hands of power, by rendering a jury the indispensable judges of all crimes.

The influence which foreign powers may attempt to exercise in our affairs are lessened, and a wholesome provision has been made against it; for no person holding an office under the United States is permitted to enjoy any foreign honors, powers or emoluments.

The apprehensions of the people have been excited, perhaps by persons with good intentions, about the powers of the new government to raise an army. Let us consider this point with moderation and candor. As enemies will sometimes insult us, invade our country and capture our property, it is clear a power in our government to oppose, restrain or destroy them, is necessary to our honor, safety and existence. The military should, however, be regarded with a watchful eye; for it is a profession that is liable to dangerous perversion. But the powers vested in the federal government do not go the length which has been said. A standing army is not granted or intended, for there can be no provision for its continuing three years, much less for its permanent establishment. Two years are the utmost time for which the money can be given, it will be under the restrictions which wisdom and jealousy can suggest, and the original grant of the supplies must be made by the House of Representatives, the immediate delegates of the people. The Senate and President, who also derive their power from the people, appoint the officers, and the heads of the departments, who must submit their accounts to the whole legislature, are to pay and provide them, as shall be directed by the laws that shall contain the conditions of the grant. The militia, who are in fact the effective part of the people at large, will render many troops quite unnecessary. They will form a powerful check upon the regular troops, and will generally be sufficient to overawe them—for our detached situation will seldom give occasion to raise an army, though a few scattered companies may often be necessary; but whenever, even on the most obvious occasion, an army shall be raised, the several states shall be called, by the nature of things, to attend to the condition of the militia. Republican jealousy, the guardian Angel of these states, will watch the motions of our military citizens, even though they will be the soldiers of a free people. There is a wide difference between the troops of such a commonwealth as ours, founded on equal and unalienable principles, and those of a regal government, where ambition and oppression are the profession of the king. In the first case, a military officer is the occasional servant of the people, employed for their defence; in the second, he is the ever ready instrument to execute the [435] schemes of conquest or oppression, with which the mind of his royal master may be disturbed.

Observations have been made on the power given to the federal Government in regard to the elections of Representatives and Senators. The regulations of these elections are, by the first part of the clause, to be prescribed by the state legislatures, who are certainly the proper bodies, if they will always execute the duty. But in case the union or the public safety should be endangered by an omission of this duty, as in the case of Rhode-Island,¹ then the legislature of the United States can name for the people a convenient time, and do other matters necessary to ensure the free exercise of their right of election. The exception, in regard to the places of choosing Senators, was made from due respect to the sovereignty of the state legislatures, who are to elect the Senators, and whose place of meeting ought not to be prescribed to them by any authority, except indeed, as we always must, by the authority of the people. This power given to the federal legislature is no more than what is possessed by the governments of all the states. The constitution of Pennsylvania permits two thirds of such cities and counties, as shall elect representatives, to exercise all the powers of the General Assembly, "so fully and imply as if the whole were present," should any part of the state neglect or refuse to perform their duty in this particular. In short, it is a power necessary to preserve the social compact of each state and the confederation of the United States.

Besides the securities for the liberties of the people arising out of the federal government, they are guarded by their state constitutions, and by the nature of things in the separate states. The Governor or President in each commonwealth, the Councils, Senates, Assemblies, Judges, Sheriffs, Grand and Petit Juries, Officers of Militia, Clergy and Lay Officers of all churches, state and county Treasurers, Probationaries, Registers, Presidents and other officers of Universities, Colleges and Academies, Wardens of ports and cities, Burgesses of towns, Commissioners of counties, County Lieutenants, and many other officers of power and influence, will still be chosen within each state, without any possible interference of the federal government. The separate states will also choose all the members of the legislative and executive branches of the United States. The people at large in each state will choose their federal representatives, and, unless ordered otherwise by the state legislatures, may choose the electors of the President and Vice-President of the Union. And lastly, the legislatures of the states will have the election of the Senate, as they have heretofore had of the Members of Congress. Let us then, with a candid scrutiny of the subject, ask ourselves, whether it can be feared, that a majority of the Representatives, each of whom will be chosen by six thousand enlightened freemen, can betray their country?—Whether a majority of the Senate, each of whom will be chosen by the legislature of a free, sovereign and independent state, without any stipulations in favour of wealth or the contemptible distinctions of birth or rank, [435] and who will be closely observed by the state legislatures, can destroy our liberties, contrived as they are to be by the house of representatives?—or whether a temporary limited executive officer, watched by the federal Representatives, by the Senate, by the State Legislatures, by his personal enemies among the people of his own state, by the jealousy of the people of rival states, and by the whole of the people of the Union, can ever endanger our Freedom?

Permit me, my fellow-citizens, to close these observations by remarking, that there is no spirit of arrogance in the new federal constitution. It addresses you with becoming modesty, admitting that it may contain errors. Let us give it a trial; and when experience has taught its mistakes, the people, whom it preserves absolutely all powerful can reform and amend them. That I may be perfectly understood, I will acknowledge its acceptance by all the states, without delay, is the second wish of my heart. The first is, that our country may be virtuous and free.

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gasparo J. Saladino, Richard Lefler, Charles H. Schooner and Margaret A. Hogan, Charlottesville: University of Virginia Press, 2009.
Creative Commons License: <https://creativecommons.org/licenses/by/4.0/>
Original source: Comments on the Constitution, Volume XIII, Comments on the Constitution, No. 1