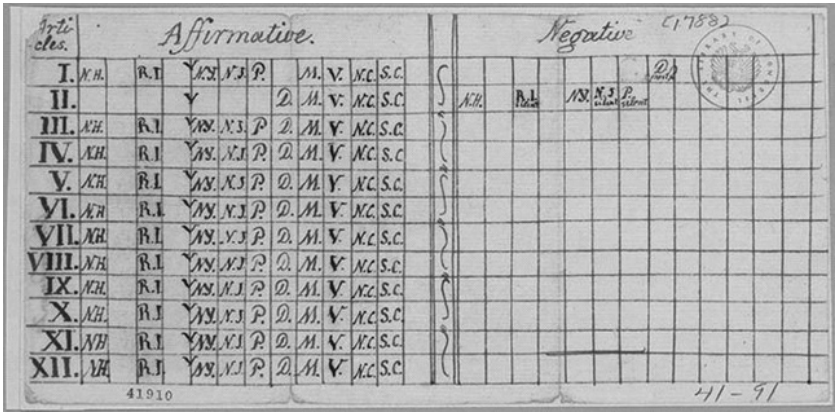
THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION AND THE BILL OF RIGHTS

VOLUME XXXVIII

Ratification of the

BILL OF RIGHTS

[2]



Thomas Jefferson's Tally Sheet

After four months of debate, the First Federal Congress in September 1789 agreed to propose twelve amendments to the Constitution that were submitted to the states for their legislative approval. President George Washington sent manuscript broadsides of the twelve amendments to the state executives on 2 October 1789. When a legislature acted on the amendments, it notified President Washington, who, in turn, notified both Congress and the office of the Secretary of State.

As the official ''certifying officer,'' Secretary of State Thomas Jefferson determined which amendments had been officially adopted. To assist him in cataloging the state ratifications, Jefferson drafted a chart with the twelve amendments listed in the left-hand column and with twenty-six empty boxes in the top row—half for ''affirmative'' actions and half for ''negative'' actions. As each state responded, Jefferson inserted its action in the appropriate empty box in a vertical column reserved for that particular state arranged left-to-right in a north-to-south arrangement. When Vermont joined the Union and ratified the twelve amendments, Jefferson did not draft another chart, but rather assigned Vermont (with a ''V'') on the vertical line between the columns reserved for the states of Connecticut and New York. Jefferson left the columns for Massachusetts, Connecticut, and Georgia blank because these states did not send an official ''exemplification'' of their actions.

THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION AND THE BILL OF RIGHTS

Volume XXXVIII

BILL OF RIGHTS

[2]

27 September 1787–31 May 1788

Editors

John P. Kaminski
Elizabeth M. Schoenleber
Dustin M. Cohan
Anna M. Biermeier
Sarah K. Danforth
Thomas H. Linley
Timothy D. Moore
Oindrila Chattopadhyay
Christopher S. Berry
Daniel J. Hoefs

MADISON
WISCONSIN HISTORICAL SOCIETY PRESS
2022

The Documentary History of the Ratification of the Constitution is sponsored by the National Historical Publications and Records Commission and the University of Wisconsin–Madison. Preparation of this volume was made possible by grants from the National Historical Publications and Records Commission; the Division of Research Programs of the National Endowment for the Humanities, an independent federal agency; the Lynde and Harry Bradley Foundation; the William Nelson Cromwell Foundation; and the Hamilton Roddis Foundation. Any views, findings, conclusions, or recommendations expressed in this publication do not necessarily reflect those of the National Endowment for the Humanities.

---

library of congress cataloging in publication data [revised]
Main entry under title:
The Documentary history of the ratification
of the Constitution.

Editors for v. 38: John P. Kaminski, Thomas H. Linley, Elizabeth M. Schoenleber, Timothy D. Moore, Dustin M. Cohan, Oindrila Chattopadhyay, Anna M. Biermeier, Christopher S. Berry, Sarah K. Danforth, Daniel J. Hoefs.

CONTENTS: v. 1. Constitutional documents and records, 1776–1787.—v. 2. Ratification of the Constitution by the States: Pennsylvania.—v. 3. Ratification of the Constitution by the States: Delaware, New Jersey, Georgia, Connecticut.—v. 4–7. Ratification of the Constitution by the States: Massachusetts (1–4).—v. 8–10. Ratification of the Constitution by the States: Virginia (1–3).—v. 11–12. Ratification of the Constitution by the States: Maryland (1–2).—v. 13–18. Commentaries on the Constitution, public and private (1–6).—v. 19–23. Ratification of the Constitution by the States: New York (1–5).—v. 24–26. Ratification of the Constitution by the States: Rhode Island (1–3).—v. 27. Ratification of the Constitution by the States: South Carolina.—v. 28. Ratification of the Constitution by the States: New Hampshire.—v. 29. Ratification of the Constitution by the States: Confederation Congress Implements the Constitution/Vermont.—v. 30–31. Ratification of the Constitution by the States: North Carolina (1–2).—v. 32–34. Ratification of the Constitution by the States: Pennsylvania Supplemental Documents (1–3)—v. 35. Cumulative Name Index.—v. 36. Cumulative Subject Index.—v. 37. Bill of Rights (1).—v. 38. Bill of Rights (2).

1. United States—Constitutional history—Sources.

I. Jensen, Merrill. II. Kaminski, John P. III. Saladino, Gaspare J. IV. Leffler, Richard. V. Schoenleber, Charles H. VI. Reid, Jonathan M. VII. Flamingo, Margaret R. VIII. Lannér-Cusin, Johanna E. IX. Fields, David P. X. Conley, Patrick T. XI. Moore, Timothy, D. XII. Stevens, Michael E. XIII. Muller, H. Nicholas III.
KF4502.D63 342′.73′029 75-14149
ISBN 978-0-87020-963-5 347.30229 AACR2

To

Leonard W. Levy

Contents

Frontispiece ii
Acknowledgments xiv
Organization xv
Editorial Procedures xviii
General Ratification Chronology, 1786–1939 xix
Calendar for the Years 1787–1792 xxiii
Symbols xxvi

Introduction 3
Cato I, New York Journal, 27 September 1787 4
Richard Henry Lee's Proposed Amendments, 27 September 1787 5
Henry Knox to Henry Jackson, New York, post-28 September 1787 12
James Madison to George Washington, New York, 30 September 1787 12
Richard Henry Lee to George Mason, New York, 1 October 1787 15
Cæsar I, New York Daily Advertiser, 1 October 1787 16
Address of the Seceding Pennsylvania Assemblymen, Philadelphia 2 October 1787 16
Richard Henry Lee to Samuel Adams, New York, 5 October 1787 18
Centinel I, Philadelphia Independent Gazetteer, 5 October 1787 21
James Wilson: Speech at a Public Meeting, Philadelphia, State House Yard 6 October 1787 25
George Mason: Objections to the Constitution, 7 October 1787 28
George Mason to George Washington, Gunston Hall, Fairfax County, Va. 7 October 1787 30
George Mason: Objections to the Constitution, 7 October 1787 30
Foederal Constitution, Pennsylvania Gazette, 10 October 1787 31
Richard Henry Lee to George Washington, New York, 11 October 1787 31
A Citizen of Pennsylvania, Pennsylvania Packet, 12 October 1787 32
An Old Whig I, Philadelphia Independent Gazetteer, 12 October 1787 35
Sly-Boots, Pennsylvania Herald, 13 October 1787 39
Philadelphia Independent Gazetteer, 13 October 1787 40
George Washington to Henry Knox, Mount Vernon, Fairfax County, Va. 15 October 1787 41
A Democratic Federalist, Pennsylvania Herald, 17 October 1787 41
Cæsar II, New York Daily Advertiser, 17 October 1787 45
Montezuma, Philadelphia Independent Gazetteer, 17 October 1787 46
Elbridge Gerry to the Massachusetts General Court, New York 18 October 1787 50
A Citizen of Philadelphia, Remarks on the Address of Sixteen Members Philadelphia, 18 October 1787 52
An Old Whig III, Philadelphia Independent Gazetteer, 20 October 1787 54
An American Citizen IV: On the Federal Government, Philadelphia 21 October 1787 56
Henry Knox to Marquis de Lafayette, New York, 24 October 1787 58
A Citizen, Pennsylvania Carlisle Gazette, 24 October 1787 59
Centinel II, Philadelphia Freeman's Journal, 24 October 1787 60
An Old Constitutionalist, Philadelphia Independent Gazetteer 26 October 1787 64

Richard Henry Lee to Samuel Adams, New York, 27 October 1787 64
A Confederationalist, Pennsylvania Herald, 27 October 1787 66
"M.C.," Pennsylvania Herald, 27 October 1787 68
An Old Whig IV, Philadelphia Independent Gazetteer, 27 October 1787 70
John De Witt II, Boston American Herald, 29 October 1787 72
Brutus II, New York Journal, 1 November 1787 73
Cincinnatus I: To James Wilson, Esquire, New York Journal
1 November 1787 78
Timoleon, New York Journal, 1 November 1787 (extraordinary) 83
An Old Whig V, Philadelphia Independent Gazetteer, 1 November 1787 87
"M.," New Hampshire Spy, 3 November 1787 90
Archibald Stuart to John Breckinridge, Richmond, Va., 6 November 1787 91
An Officer of the Late Continental Army, Philadelphia Independent Gazetteer
6 November 1787 91
Hugh Williamson: Speech at Edenton, N.C., 8 November 1787 94
Federal Farmer, Letters to the Republican, New York, 8 November 1787 96
Cincinnatus II: To James Wilson, Esquire, New York Journal
8 November 1787 105
Centinel III, Philadelphia Independent Gazetteer, 8 November 1787 109
Uncus, Maryland Journal, 9 November 1787 111
John Adams to Thomas Jefferson, London, 10 November 1787 115
William Grayson to William Short, New York, 10 November 1787 115
David Ramsay to Benjamin Rush, Charleston, S.C., 10 November 1787 115
Plain Truth, Philadelphia Independent Gazetteer, 10 November 1787 117
"R.S.," Pennsylvania Herald, 10 November 1787 120
"G.," Pittsburgh Gazette, 10 November 1787 121
Massachusetts Centinel, 10 November 1787 122
Portius, Boston American Herald, 12 November 1787 123
James White to Governor Richard Caswell, New York, 13 November 1787 125
One of the Late Army, Philadelphia Freeman's Journal, 14 November 1787 126
Vox Populi, Massachusetts Gazette, 16 November 1787 127
Philadelphia Freeman's Journal, 21 November 1787 128
Algernon Sidney, Philadelphia Independent Gazetteer, 21 November 1787 129
Atticus III, Boston Independent Chronicle, 22 November 1787 130
A Countryman II, New Haven Gazette, 22 November 1787 131
A Plain Citizen: To the Honorable the Convention of the State of Pennsylvania
Philadelphia Independent Gazetteer, 22 November 1787 133
Truth, Massachusetts Centinel, 24 November 1787 136
Preston, Connecticut: Instructions to Its Town Delegates to the State Convention
26 November 1787 137
A Federal Republican, A Review of the Constitution, New York
28 November 1787 138
An Old Whig VII, Philadelphia Independent Gazetteer, 28 November 1787 140
One of the Middling-Interest, Massachusetts Centinel, 28 November 1787 144
Valerius, Massachusetts Centinel, 28 November 1787 148

THE PENNSYLVANIA CONVENTION AND A BILL OF RIGHTS
28 NOVEMBER–12 DECEMBER 1787 150
James Wilson: Speech in the Pennsylvania Convention, 28 November 1787 150
John Smilie: Speech in the Pennsylvania Convention, 28 November 1787 151

Thomas McKean: Speech in the Pennsylvania Convention 28 November 1787 153
James Wilson and John Smilie: Speeches in the Pennsylvania Convention 28 November 1787 154
Robert Whitehill: Speech in the Pennsylvania Convention 28 November 1787 157
Thomas Hartley: Speech in the Pennsylvania Convention 30 November 1787 161
Benjamin Rush: Speech in the Pennsylvania Convention 30 November 1787 163
Jasper Yeates: Speech in the Pennsylvania Convention, 30 November 1787 165
James Wilson: Speech in the Pennsylvania Convention, 4 December 1787 166
James Wilson: Speech in the Pennsylvania Convention, 7 December 1787 167
Cumberland County Petition Read in the Pennsylvania Convention 12 December 1787 169
Robert Whitehill: Speech in the Pennsylvania Convention 12 December 1787 171

A Countryman III, New Haven Gazette, 29 November 1787 174
Editors' Note: The Virginia General Assembly and a Second General Convention 30 November–27 December 1787 175
Portland, Maine, Cumberland Gazette, 30 November 1787 176
Many Customers, Philadelphia Independent Gazetteer, 1 December 1787 177
Archibald Stuart to James Madison, Richmond, Va., 2 December 1787 179
Samuel Adams to Richard Henry Lee, Boston, 3 December 1787 180
One of the Common People, Boston Gazette, 3 December 1787 182
Philadelphiensis III, Philadelphia Freeman's Journal, 5 December 1787 184
"Z," Boston Independent Chronicle, 6 December 1787 184
Portland, Maine, Cumberland Gazette, 6 December 1787 186
Brutus, Virginia Journal, 6 December 1787 187
A True Friend, Richmond, Va., 6 December 1787 189
From Roger Sherman, New Haven, Conn., 8 December 1787 190
A Landholder VI, Connecticut Courant, 10 December 1787 191
George Lee Turberville to James Madison, Richmond, Va., 11 December 1787 193
Pennsylvania Convention Considers Amendments to Constitution 12 December 1787 193
James Madison to Archibald Stuart, New York, 14 December 1787 193
Agrippa VI, Massachusetts Gazette, 14 December 1787 194
Belchertown, Mass.: Instructions to State Convention Delegates 17 December 1787 195
Preliminary Instructions, 17 December 1787 195
Final Instructions, 17 December 1787 196
The Dissent of the Minority of the Pennsylvania Convention 18 December 1787 197
A Countryman, Baltimore Maryland Gazette, 18 December 1787 203
Anti-Cincinnatus, Northampton, Mass., Hampshire Gazette 19 December 1787 204
North Carolina Gazette, 19 December 1787 206
Thomas Jefferson to James Madison, Paris, 20 December 1787 207
Rufus King to Jeremiah Wadsworth, New York, 23 December 1787 208

One of the People: Antifederal Arguments, Maryland Journal 25 December 1787 209
Philadelphiensis VI, Philadelphia Freeman's Journal, 26 December 1787 210
Edmund Randolph: Reasons for Not Signing the Constitution 27 December 1787 211
Remarker, Boston Independent Chronicle, 27 December 1787 216
The New Roof, Pennsylvania Packet, 29 December 1787 218
America, New York Daily Advertiser, 31 December 1787 220
Thomas Jefferson to Uriah Forrest, Paris, 31 December 1787 225
Marquis de Lafayette to George Washington, Paris, 1 January 1788 226
Giles Hickory, New York American Magazine, 1 January 1788 226
Mariot, Massachusetts Centinel, 2 January 1788 230
Samuel Osgood to Samuel Adams, New York, 5 January 1788 231
The Republican, Connecticut Courant, 7 January 1788 233
Thomas B. Wait to George Thatcher, Portland, Maine, 8 January 1788 238
George Washington to Edmund Randolph, Mount Vernon, Fairfax County, Va. 8 January 1788 239
Massachusetts Salem Mercury, 8 January 1788 240
Dentatus, Philadelphia Independent Gazetteer, 8 January 1788 241
Jeremiah Hill to George Thatcher, Biddeford, Maine, 9 January 1788 241
Pennsylvania Gazette, 9 January 1788 242
Pennsylvania Packet, 9 January 1788 242
Conciliator, Philadelphia Independent Gazetteer, 9 January 1788 243
James Madison to Edmund Randolph, New York, 10 January 1788 245
An Impartial Citizen, Petersburg Virginia Gazette, 10 January 1788 246
A Farmer, Exeter, N.H., Freeman's Oracle, 11 January 1788 248
An Honest American, Philadelphia Independent Gazetteer, 11 January 1788 252
Publius: The Federalist 38, New York Independent Journal, 12 January 1788 252
Charles Johnson to James Iredell, Strawberry Hill, Edenton, N.C. 14 January 1788 253
Marlborough, New Hampshire, Town Meeting, 15 January 1788 254
Agrippa XII, Massachusetts Gazette, 15 January 1788 255
Conciliator, Philadelphia Independent Gazetteer, 15 January 1788 256
A Republican Federalist, Philadelphia Freeman's Journal, 16 January 1788 261
Philadelphia Freeman's Journal, 16 January 1788 261
Philanthropos, Pennsylvania Gazette, 16 January 1788 262
Brutus IX, New York Journal, 17 January 1788 265

THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES AND A BILL OF RIGHTS 18 JANUARY 1788 266
James Lincoln: Speech in the South Carolina House of Representatives 18 January 1788 266
Charles Cotesworth Pinckney: Speech in the South Carolina House of Representatives, 18 January 1788 266

Alfredus, Exeter, N.H., Freeman's Oracle, 18 January 1788 267
An Independent Freeholder, Winchester Virginia Gazette, 18 January 1788 272
An Honest American, Philadelphia Independent Gazetteer, 19 January 1788 274
Verus Conciliator, Philadelphia Independent Gazetteer, 19 January 1788 275
Junius, Massachusetts Gazette, 22 January 1788 275
Silas Lee to George Thatcher, Biddeford, Maine, 23 January 1788 277

John Adams to Cotton Tufts, Grosvenor Square, London, 23 January 1788 277
Valerius, Virginia Independent Chronicle, 23 January 1788 278

THE MASSACHUSETTS CONVENTION AND A BILL OF RIGHTS
23 JANUARY–5 FEBRUARY 1788 280
Joseph Bradley Varnum: Speech in the Massachusetts Convention
23 January 1788 280
Samuel Thompson: Speech in the Massachusetts Convention
23 January 1788 281
James Bowdoin: Speech in the Massachusetts Convention, 23 January 1788 281
Theophilus Parsons: Speech in the Massachusetts Convention
23 January 1788 282
Abraham Holmes: Speech in the Massachusetts Convention
30 January 1788 283
Christopher Gore: Speech in the Massachusetts Convention
30 January 1788 285
Thomas Dawes, Jr.: Speech in the Massachusetts Convention
30 January 1788 286
William Cushing: Undelivered Speech in the Massachusetts Convention
c. 4 February 1788 288
John Taylor: Speech in the Massachusetts Convention, 5 February 1788 290
Theophilus Parsons: Speech in the Massachusetts Convention
5 February 1788 290

Massachusetts Centinel, 26 January 1788 291
Plain Truth, Philadelphia Independent Gazetteer, 26 January 1788 292
Agrippa XV, Massachusetts Gazette, 29 January 1788 292
Civis Rusticus, Virginia Independent Chronicle, 30 January 1788 294
Aristides: Remarks on the Proposed Plan of a Federal Government
Annapolis, Md., 31 January 1788 297
Thomas Jefferson to William Stephens Smith, Paris, 2 February 1788 301
Marquis de Lafayette to George Washington, Paris, 4 February 1788 302
Agrippa XVI, Massachusetts Gazette, 5 February 1788 302
Massachusetts Convention Recommends Amendments to Constitution
6 February 1788 304
John Trumbull to Jonathan Trumbull, Jr., Paris, 6 February 1788 304
Philadelphiensis IX, Philadelphia Freeman's Journal, 6 February 1788 305
An Old Whig VIII, Philadelphia Independent Gazetteer, 6 February 1788 305
The State Soldier II, Virginia Independent Chronicle, 6 February 1788 306
Thomas Jefferson to Alexander Donald, Paris, 7 February 1788 308
George Washington to Marquis de Lafayette, Mount Vernon
Fairfax County, Va., 7 February 1788 308
A Friend to the Rights of the People: Anti-Fœderalist, No. I, Exeter, N.H.
Freeman's Oracle, 8 February 1788 309
A Friend to the Republic: Anti-Fœderalist, No. II, Exeter, N.H., Freeman's
Oracle, 8 February 1788 310
John Adams to Cotton Tufts, London, 12 February 1788 311
Conciliator, Philadelphia Independent Gazetteer, 12 February 1788 312
Algernon Sidney II, Philadelphia Independent Gazetteer, 13 February 1788 312
A Citizen of the United States, Pennsylvania Gazette, 13 February 1788 313
A Farmer I, Baltimore Maryland Gazette, 15 February 1788 314

New York Journal, 15 February 1788 324
From George Nicholas, Charlottesville, Va., 16 February 1788 325
Baltimore Maryland Gazette, 19 February 1788 326
Marcus I, Norfolk and Portsmouth Journal, 20 February 1788 326
The Impartial Examiner I, Virginia Independent Chronicle, 20 February 1788 330
Alexander White, Winchester Virginia Gazette, 22 February 1788 331
Richard Henry Lee to James Gordon, Jr., Chantilly, Westmoreland County, Va. 26 February 1788 335
Joseph Spencer to James Madison, Orange County, Va., 28 February 1788 336
Alexander White, Winchester Virginia Gazette, 29 February 1788 337
A Farmer II, Baltimore Maryland Gazette, 29 February 1788 338
A Columbian Patriot: Observations on the Constitution, Boston, February 1788 343
Giles Hickory, New York American Magazine, 1 March 1788 345
Pittsburgh Gazette, 1 March 1788 355
Petition of the Inhabitants of Wayne Township, Cumberland County, Pa. 1 March 1788 357
Aristides, Maryland Journal, 4 March 1788 (extra) 359
The Impartial Examiner I, Virginia Independent Chronicle, 5 March 1788 364
Providence, R.I., United States Chronicle, 6 March 1788 366
John Page to Thomas Jefferson, Rosewell, Gloucester County, Va. 7 March 1788 366
Philadelphiensis XI, Philadelphia Independent Gazetteer, 8 March 1788 367
Reflection I, Pennsylvania Carlisle Gazette, 12 March 1788 368
A Plebeian, Maryland Journal, 14 March 1788 370
Sommers, Pittsburgh Gazette, 15 March 1788 372
Maryland Journal, 18 March 1788 377
Pennsylvania Carlisle Gazette, 19 March 1788 377
Gazette of the State of Georgia, 20 March 1788 379
Luther Martin: Address No. II, Maryland Journal, 21 March 1788 Philadelphia 381
Freeman's Journal, 26 March 1788 388
Luther Martin: Address No. III, Maryland Journal, 28 March 1788 388
A Friend to Equal Liberty, Philadelphia Independent Gazetteer 28 March 1788 392
Amendment, Rhode Island Providence Gazette, 29 March 1788 393
A Farmer VI, Baltimore Maryland Gazette, 1 April 1788 394
A Native of Virginia: Observations upon the Proposed Plan of Federal Government, Petersburg, Va., 2 April 1788 396
Boston Independent Chronicle, 3 April 1788 400
A Planter, Gazette of the State of Georgia, 3 April 1788 401
Luther Martin: Address No. IV, Maryland Journal, 4 April 1788 403
George Nicholas to James Madison, Charlottesville, Va., 5 April 1788 405
James Madison to George Nicholas, Orange, Va., 8 April 1788 406
Thoughts at the Plough, Pennsylvania Carlisle Gazette, 9 April 1788 406
Cassius II: To Richard Henry Lee, Esquire, Virginia Independent Chronicle 9 April 1788 409
A Freeholder, Virginia Independent Chronicle, 9 April 1788 (extraordinary) 410
North Carolina Edenton Intelligencer, 9 April 1788 412
A Citizen of the State of Maryland, Remarks Relative to a Bill of Rights Philadelphia, 12 April 1788 412
Benjamin Rush to David Ramsay, Charleston Columbian Herald 14 April 1788 415

A Citizen of New-York: An Address to the People of the State of New-York
New York, 15 April 1788 416
A Plebeian: An Address to the People of the State of New-York, New York
17 April 1788 418
Fabius III, Pennsylvania Mercury, 17 April 1788 420
Fabius IV, Pennsylvania Mercury, 19 April 1788 424
James Madison to Thomas Jefferson, Orange, Va., 22 April 1788 429
Peter W. Yates to His Friend in the Country, Albany, N.Y., 24 April 1788 429
George Washington to John Armstrong, Sr., Mount Vernon, Fairfax County, Va.
25 April 1788 430
A Farmer VII (Part 6), Baltimore Maryland Gazette, 25 April 1788 431
Henry Knox to Marquis de Lafayette, New York, 26 April 1788 435
Maryland Convention Considers Amendments to Constitution, 26 April 1788 435
Richard Henry Lee to Samuel Adams, Chantilly, Westmoreland County, Va.
28 April 1788 435
George Washington to Marquis de Lafayette, Mount Vernon, Fairfax County, Va.
28 April 1788 437
Fabius VIII, Pennsylvania Mercury, 29 April 1788 438
Philodemos, Pennsylvania Gazette, 30 April 1788 439
Philadelphia Independent Gazetteer, 30 April 1788 440
The Society of Western Gentlemen Revise the Constitution
Virginia Independent Chronicle, 30 April, 7 May 1788 (extra) 442
Address to the Members of the New York and Virginia Conventions
post-30 April 1788 446
Thomas Jefferson to George Washington, Paris, 2 May 1788 449
Federal Farmer: An Additional Number of Letters to the Republican, New York
2 May 1788 449
Richard Henry Lee to George Mason, Chantilly, Westmoreland County, Va.
7 May 1788 465
Nathan Dane to Samuel Adams, New York, 10 May 1788 467
The Federalist's Political Creed, Philadelphia Independent Gazetteer
10 May 1788 468
Pennsylvania Carlisle Gazette, 21 May 1788 471
South Carolina Convention Recommends Amendments to Constitution
23 May 1788 475
Richard Henry Lee to Edmund Pendleton, Chantilly, Westmoreland County, Va.
26 May 1788 475
George Mason to Thomas Jefferson, Gunston Hall, Fairfax County, Va.
26 May 1788 479
Thomas Jefferson to Edward Carrington, Paris, 27 May 1788 480
Publius: The Federalist 84, New York, 28 May 1788 482
Publius: The Federalist 85, New York, 28 May 1788 488
An American, Pennsylvania Packet, 31 May 1788 488

Biographical Gazetteer 490

Index 509

Acknowledgments

This Bill of Rights volume was supported principally by grants from the National Historical Publications and Records Commission, the National Endowment for the Humanities, and the Lynde and Harry Bradley Foundation. Substantial aid was also provided by the William Nelson Cromwell Foundation, the Hamilton Roddis Foundation, and the Wisconsin Alumni Research Foundation.

We thank Christopher Eck and R. Darrell Meadows of the NHPRC; Adam Wolfson, Peter Scott, and Jason Boffetti of the NEH; Richard W. Graber, Dianne J. Sehler, Daniel P. Schmidt, and Ingrid Gregg of the Bradley Foundation; John D. Gordan III, Charles Dowling, and L. Browning VanMeter, Jr. of the Cromwell Foundation; and Thomas H. Roddis and Philip Hamilton Prange of the Hamilton Roddis Foundation.

A continuing debt of gratitude is owed to the administration and staff of the University of Wisconsin–Madison, especially Assistant Dean Emerita Linda J. Neusen, Kelly Mallon, and John G. Varda of the College of Letters and Science; Russell Schwalbe of the UW Graduate School; and Dawn-Marie M. Roberts and John Douglas of Research and Sponsored Programs. In the Department of History, we thank interim chair Anne Hansen, Todd Anderson, Michael R. Burmeister, Jana Valeo, John J. Persike, and Leslie Abadie.

In addition to being our publisher, the Wisconsin Historical Society is our primary research library. The Society's staff continues its invaluable support as does the staff at the University of Wisconsin–Madison Memorial Library, especially Peter C. Gorman and Jesse Henderson of the Library's Digital Collections.

This volume is dedicated to Leonard W. Levy (1923–2006), the Andrew Mellon All-Claremont Professor of the Humanities at Claremont Graduate School and a recipient of the Pulitzer Prize, who wrote prolifically on the United States Bill of Rights.

Organization

The Documentary History of the Ratification of the Constitution is divided into:

(1) *Constitutional Documents and Records, 1776–1787* (1 volume),
(2) *Ratification of the Constitution by the States* (27 volumes),
(3) *Commentaries on the Constitution: Public and Private* (6 volumes),
(4) *Cumulative Index* (2 volumes).
(5) *The Bill of Rights* (6 volumes).

Internet Availability

The DHRC volumes will be found on the website of "Rotunda: The American Founding Era," maintained by the University of Virginia Press (http://rotunda.upress.virginia.edu), and at UW Digital Collections on the website of the University of Wisconsin–Madison Libraries (https://digital.library.wisc.edu/1711.dl/Constitution). The latter platform also contains the supplemental documents for the state volumes.

Constitutional Documents and Records, 1776–1787 (Vol. I)

This introductory volume, a companion to all of the other volumes, traces the constitutional development of the United States during its first twelve years. Cross-references to it appear frequently in other volumes when contemporaries refer to events and proposals from 1776 to 1787. The documents include: (1) the Declaration of Independence, (2) the Articles of Confederation, (3) ratification of the Articles, (4) proposed amendments to the Articles, proposed grants of power to Congress, and ordinances for the Western Territory, (5) the calling of the Constitutional Convention, (6) the appointment of Convention delegates, (7) the resolutions and draft constitutions of the Convention, (8) the report of the Convention, and (9) the Confederation Congress and the Constitution.

Ratification of the Constitution by the States (Vols. II–XII, XIX–XXXIV)

The volumes are arranged roughly in the order in which the states considered the Constitution. Although there are variations, the documents for each state are organized into the following groups: (1) commentaries from the adjournment of the Constitutional Convention to the meeting of the state legislature that called the state convention, (2) the proceedings of the legislature in calling the convention, (3) commentaries from the call of the convention until its meeting, (4) the election of convention delegates, (5) the proceedings of the convention, and (6) post-convention documents.

Commentaries on the Constitution: Public and Private (Vols. XIII–XVIII)

This series contains newspaper items, pamphlets, and broadsides that circulated regionally or nationally. It also includes some private letters that give the writers' opinions of the Constitution in general or that report on the prospects for ratification in several states. Except for some grouped items, documents are arranged chronologically and are numbered consecutively throughout the six volumes. There are frequent cross-references between *Commentaries* and the state series.

Cumulative Index (Vols. XXXV–XXXVI)

These two volumes comprise a name index (vol. XXXV) and subject index (vol. XXXVI) for all thirty-four ratification volumes and fourteen state and Congress supplements.

Supplements to Ratification of the Constitution by the States

Supplemental documents were originally placed on microfiche and are available in that form for Pennsylvania (Vol. II), Delaware, New Jersey, Georgia, and Connecticut (all four, Vol. III), and Virginia (Vols. VIII–X). The original microfiche editions of supplemental documents for Pennsylvania, Delaware, New Jersey, Georgia, Connecticut, and Virginia were digitized for online viewing. These digitized supplements can be located at UW Digital Collections on the website of the University of Wisconsin–Madison Libraries (https://digital.library.wisc.edu/1711.dl/Constitution). Supplemental documents for all of the states will be made available in digital form in the coming years. (Because of the importance of the Pennsylvania Supplemental Documents to both the Pennsylvania and the national debate over the Constitution, these documents have been published as RCS volumes XXXII–XXXIV. The supplemental documents for Rhode Island were printed as an unnumbered and privately funded volume by the Center for the Study of the American Constitution.)

Much of the material for each state is repetitious or peripheral but still valuable. Mostly literal transcripts of this material are placed in the supplements. (Any exceptions to this rule have been clearly indicated.) Many facsimiles are also included.

The types of documents in the supplements are:

(1) newspaper items that repeat arguments, examples of which are printed in the state volumes,

(2) pamphlets that circulated primarily within one state and that are not printed in the state volumes or in *Commentaries*,

(3) letters that contain supplementary material about politics and social relationships,

(4) images of petitions with the names of signers,

(5) images of manuscripts such as notes of debates, and
(6) miscellaneous documents such as election certificates, attendance records, pay vouchers and other financial records, etc.

The Bill of Rights (Vols. XXXVII–XLII)

The public and private debate on the Constitution continued in several states after ratification. It was centered on the issue of whether there should be amendments to the Constitution and the manner in which amendments should be proposed—by a second constitutional convention or by the new U.S. Congress. A bill of rights was proposed in the U.S. Congress on 8 June 1789. Twelve amendments were adopted on 25 September and were sent to the states by President George Washington on 2 October. These volumes will contain the documents related to the public and private debate over amendments, to the proposal of amendments by Congress, and to the ratification of the Bill of Rights by the states.

Editorial Procedures

All documents are transcribed literally. Obvious slips of the pen and errors in typesetting contemporary newspapers, broadsides, and pamphlets are silently corrected. When spelling, capitalization, punctuation, paragraphing, and spacing between words are unclear, modern usage is followed. Superscripts and interlineations are lowered to the line, and marginalia are inserted where the author intended. The thorn is spelled out (i.e., ''ye'' becomes ''the''). Crossed-out words are included when significant. Obsolete meanings of words are supplied in footnotes.

Square brackets are used for editorial insertions. Conjectural readings are enclosed in brackets with a question mark. Illegible and missing words are indicated by dashes enclosed in brackets. However, when the author's intent is obvious, illegible or missing text (up to five characters in length) is silently provided.

All headings are supplied by the editors. Salutations, closings of letters, addresses, endorsements, docketings, and postmarks are deleted unless they provide important information, in which case they are retained in the document or placed in editorial notes. Contemporary footnotes and marginal citations are printed after the text of the document and immediately preceding editorial footnotes. Symbols used by contemporaries, such as stars, asterisks, and daggers, have been replaced by superscripted letters (a), (b), (c), etc.

Many documents, particularly letters, are excerpted when they contain material that is not relevant to ratification. Whenever an excerpt is printed in this edition and a longer excerpt or the entire document appears elsewhere in this edition or in other editions, this is noted.

General Ratification Chronology, 1786–1939

1786

21 January	Virginia calls meeting to consider granting Congress power to regulate trade.
11–14 September	Annapolis Convention.
20 September	Congress receives Annapolis Convention report recommending that states elect delegates to a convention at Philadelphia in May 1787.
11 October	Congress appoints committee to consider Annapolis Convention report.
23 November	Virginia authorizes election of delegates to Convention at Philadelphia.
23 November	New Jersey elects delegates.
4 December	Virginia elects delegates.
30 December	Pennsylvania elects delegates.

1787

6 January	North Carolina elects delegates.
17 January	New Hampshire elects delegates.
3 February	Delaware elects delegates.
10 February	Georgia elects delegates.
21 February	Congress calls Constitutional Convention.
22 February	Massachusetts authorizes election of delegates.
28 February	New York authorizes election of delegates.
3 March	Massachusetts elects delegates.
6 March	New York elects delegates.
8 March	South Carolina elects delegates.
14 March	Rhode Island refuses to elect delegates.
23 April–26 May	Maryland elects delegates.
5 May	Rhode Island again refuses to elect delegates.
14 May	Convention meets; quorum not present.
14–17 May	Connecticut elects delegates.
25 May	Convention begins with quorum of seven states.
16 June	Rhode Island again refuses to elect delegates.
27 June	New Hampshire renews election of delegates.
13 July	Congress adopts Northwest Ordinance.
6 August	Committee of Detail submits draft constitution to Convention.
12 September	Committee of Style submits draft constitution to Convention.
17 September	Constitution signed and Convention adjourns *sine die*.
20 September	Congress reads Constitution.
26–28 September	Congress debates Constitution.
28 September	Congress transmits Constitution to the states.
28–29 September	Pennsylvania calls state convention.
17 October	Connecticut calls state convention.
25 October	Massachusetts calls state convention.
26 October	Georgia calls state convention.
31 October	Virginia calls state convention.
1 November	New Jersey calls state convention.

6 November	Pennsylvania elects delegates to state convention.
10 November	Delaware calls state convention.
12 November	Connecticut elects delegates to state convention.
19 November–7 January 1788	Massachusetts elects delegates to state convention.
20 November–15 December	Pennsylvania Convention.
26 November	Delaware elects delegates to state convention.
27 November–1 December	Maryland calls state convention.
27 November–1 December	New Jersey elects delegates to state convention.
3–7 December	Delaware Convention.
4–5 December	Georgia elects delegates to state convention.
6 December	North Carolina calls state convention.
7 December	Delaware Convention ratifies Constitution, 30 to 0.
11–20 December	New Jersey Convention.
12 December	Pennsylvania Convention ratifies Constitution, 46 to 23.
14 December	New Hampshire calls state convention.
18 December	New Jersey Convention ratifies Constitution, 38 to 0.
25 December–5 January 1788	Georgia Convention.
31 December	Georgia Convention ratifies Constitution, 26 to 0.
31 December–12 February 1788	New Hampshire elects delegates to state convention.

1788

3–9 January	Connecticut Convention.
9 January	Connecticut Convention ratifies Constitution, 128 to 40.
9 January–7 February	Massachusetts Convention.
19 January	South Carolina calls state convention.
1 February	New York calls state convention.
6 February	Massachusetts Convention ratifies Constitution, 187 to 168, and proposes amendments.
13–22 February	New Hampshire Convention: first session.
1 March	Rhode Island calls statewide referendum on Constitution.
3–27 March	Virginia elects delegates to state convention.
24 March	Rhode Island referendum: voters reject Constitution, 2,711 to 239.
28–29 March	North Carolina elects delegates to state convention.
7 April	Maryland elects delegates to state convention.
11–12 April	South Carolina elects delegates to state convention.
21–29 April	Maryland Convention.
26 April	Maryland Convention ratifies Constitution, 63 to 11.
29 April–3 May	New York elects delegates to state convention.
12–24 May	South Carolina Convention.
23 May	South Carolina Convention ratifies Constitution, 149 to 73, and proposes amendments.
2–27 June	Virginia Convention.
17 June–26 July	New York Convention.
18–21 June	New Hampshire Convention: second session.

21 June	New Hampshire Convention ratifies Constitution, 57 to 47, and proposes amendments.
25 June	Virginia Convention ratifies Constitution, 89 to 79.
27 June	Virginia Convention proposes amendments.
2 July	New Hampshire ratification read in Congress; Congress appoints committee to report an act for putting the Constitution into operation.
21 July–4 August	First North Carolina Convention.
26 July	New York Convention Circular Letter calls for second constitutional convention.
26 July	New York Convention ratifies Constitution, 30 to 27, and proposes amendments.
2 August	North Carolina Convention proposes amendments and refuses to ratify until amendments are submitted to Congress and to a second constitutional convention.
13 September	Congress sets dates for election of President and meeting of new government under the Constitution.
20 November	Virginia requests Congress under the Constitution to call a second constitutional convention.
30 November	North Carolina calls second state convention.

1789

4 March	First Federal Congress convenes.
1 April	House of Representatives attains quorum.
6 April	Senate attains quorum.
30 April	George Washington inaugurated first President.
8 June	James Madison proposes Bill of Rights in Congress.
21–22 August	North Carolina elects delegates to second state convention.
24–26 September	Congress adopts twelve amendments to Constitution to be submitted to the states.
16–23 November	Second North Carolina Convention.
20 November	New Jersey ratifies proposed amendments.
21 November	Second North Carolina Convention ratifies Constitution, 194 to 77, and proposes amendments.
19 December	Maryland ratifies proposed amendments.
22 December	North Carolina ratifies proposed amendments.

1790

17 January	Rhode Island calls state convention.
19 January	South Carolina ratifies proposed amendments.
25 January	New Hampshire ratifies proposed amendments.
28 January	Delaware ratifies proposed amendments.
8 February	Rhode Island elects delegates to state convention.
27 February	New York ratifies proposed amendments.
1–6 March	Rhode Island Convention: first session.
10 March	Pennsylvania ratifies proposed amendments.
24–29 May	Rhode Island Convention: second session.
29 May	Rhode Island Convention ratifies Constitution, 34 to 32, and proposes amendments.
11 June	Rhode Island ratifies proposed amendments.

1791

6–10 January	Vermont Convention
10 January	Vermont Convention ratifies Constitution
18 February	Vermont admitted to the Union.
3 November	Vermont ratifies proposed amendments.
15 December	Virginia ratifies proposed amendments.
15 December	Bill of Rights adopted.

1792

1 March	Secretary of State Thomas Jefferson notifies states of the adoption of ten amendments.

1939

2 March	Massachusetts adopts Bill of Rights.
18 March	Georgia adopts Bill of Rights.
13 April	Connecticut adopts Bill of Rights.

Calendar for the Years 1787–1792

1787

JANUARY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

MARCH

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

JUNE

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

JULY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

AUGUST

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

SEPTEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

OCTOBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

NOVEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

DECEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

1788

JANUARY

S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

FEBRUARY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	

MARCH

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

APRIL

S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

MAY

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

JUNE

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JULY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

AUGUST

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

SEPTEMBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

OCTOBER

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

NOVEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

DECEMBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

1789

S	M	T	W	T	F	S
JANUARY						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

S	M	T	W	T	F	S
FEBRUARY						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

S	M	T	W	T	F	S
MARCH						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

S	M	T	W	T	F	S
APRIL						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

S	M	T	W	T	F	S
MAY						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

S	M	T	W	T	F	S
JUNE						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

S	M	T	W	T	F	S
JULY						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

S	M	T	W	T	F	S
AUGUST						
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

S	M	T	W	T	F	S
SEPTEMBER						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

S	M	T	W	T	F	S
OCTOBER						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

S	M	T	W	T	F	S
NOVEMBER						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

S	M	T	W	T	F	S
DECEMBER						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

1790

S	M	T	W	T	F	S
JANUARY						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

S	M	T	W	T	F	S
FEBRUARY						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

S	M	T	W	T	F	S
MARCH						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

S	M	T	W	T	F	S
APRIL						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

S	M	T	W	T	F	S
MAY						
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

S	M	T	W	T	F	S
JUNE						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

S	M	T	W	T	F	S
JULY						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

S	M	T	W	T	F	S
AUGUST						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

S	M	T	W	T	F	S
SEPTEMBER						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

S	M	T	W	T	F	S
OCTOBER						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

S	M	T	W	T	F	S
NOVEMBER						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

S	M	T	W	T	F	S
DECEMBER						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

1791

S	M	T	W	T	F	S
JANUARY						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

S	M	T	W	T	F	S
FEBRUARY						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

S	M	T	W	T	F	S
MARCH						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

S	M	T	W	T	F	S
APRIL						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

S	M	T	W	T	F	S
MAY						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

S	M	T	W	T	F	S
JUNE						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

S	M	T	W	T	F	S
JULY					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

S	M	T	W	T	F	S
AUGUST						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

S	M	T	W	T	F	S
SEPTEMBER						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

S	M	T	W	T	F	S
OCTOBER						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

S	M	T	W	T	F	S
NOVEMBER						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

S	M	T	W	T	F	S
DECEMBER						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

1792

S	M	T	W	T	F	S
JANUARY						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

S	M	T	W	T	F	S
FEBRUARY						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29			

S	M	T	W	T	F	S
MARCH						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

S	M	T	W	T	F	S
APRIL						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

S	M	T	W	T	F	S
MAY						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

S	M	T	W	T	F	S
JUNE						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

S	M	T	W	T	F	S
JULY						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

S	M	T	W	T	F	S
AUGUST						
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

S	M	T	W	T	F	S
SEPTEMBER						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

S	M	T	W	T	F	S
OCTOBER						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

S	M	T	W	T	F	S
NOVEMBER						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

S	M	T	W	T	F	S
DECEMBER						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Symbols

FOR MANUSCRIPTS, MANUSCRIPT DEPOSITORIES, SHORT TITLES, AND CROSS-REFERENCES

Manuscripts

Dft	Draft
FC	File Copy
MS	Manuscript
RC	Recipient's Copy

Manuscript Depositories

CtY	Yale University
DLC	Library of Congress
DNA	National Archives
MB	Boston Public Library
MHi	Massachusetts Historical Society
NHi	New-York Historical Society
NN	New York Public Library
NNC	Columbia University Libraries
PHi	Historical Society of Pennsylvania
PPL	Library Company of Philadelphia

Short Titles

Abbot, *Washington, Confederation Series*	W. W. Abbot, ed., *The Papers of George Washington: Confederation Series* (6 vols., Charlottesville, Va., 1992–1997).
Adams, *Defence of the Constitution*	John Adams, *A Defence of the Constitutions of Government of the United States of America* . . . (3 vols., London, 1787–1788).
Blackstone, *Commentaries*	Sir William Blackstone, *Commentaries on the Laws of England. In Four Books* (Reprinted from the British Copy, Page for Page with the Last Edition, 5 vols., Philadelphia, 1771–1772). Originally published in London from 1765 to 1769.

Boyd	Julian P. Boyd et al., eds., *The Papers of Thomas Jefferson* (Princeton, N.J., 1950–).
Evans	Number of documents found in the microcard or online version of Early American Imprints, Series I, 1639–1800.
Evans, *American Bibliography*	Charles Evans, *American Bibliography* (12 vols., Chicago, 1903–1934).
Farrand	Max Farrand, ed., *The Records of the Federal Convention of 1787* (3rd ed., 3 vols., New Haven, 1927).
Ford, *Essays*	Paul Leicester Ford, ed., *Essays on the Constitution of the United States, Published during Its Discussion by the People 1787–1788* (Brooklyn, N.Y., 1888).
Ford, *Pamphlets*	Paul Leicester Ford, ed., *Pamphlets on the Constitution of the United States, Published during Its Discussion by the People 1787–1788* (Brooklyn, N.Y., 1888).
Hening	William Waller Hening, ed., *The Statutes at Large; Being A Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619* (13 vols., Richmond and Philadelphia, 1809–1823).
JCC	Worthington C. Ford et al., eds., *Journals of the Continental Congress, 1774–1789* . . . (34 vols., Washington, D.C., 1904–1937).
McMaster and Stone	John B. McMaster and Frederick D. Stone, eds., *Pennsylvania and the Federal Constitution, 1787–1788* ([Philadelphia, Pa.], 1888).
Montesquieu, *Spirit of Laws*	Charles, Baron de Montesquieu, *The Spirit of Laws* (translated from the French by Thomas Nugent, 5th ed., 2 vols., London, 1773). Originally published in Geneva in 1748.
NCSR	Walter Clark, ed., *The State Records of North Carolina* (16 vols., 1895–1907).
Rutland, *Madison*	Robert A. Rutland et al., eds., *The Papers of James Madison*, Volumes VIII–XVII (Chicago and Charlottesville, Va., 1973–1991).
Smith, *Letters*	Paul H. Smith, ed., *Letters of Delegates to Congress, 1774–1789* (26 vols., Washington, D.C., 1976–2000).
Thorpe	Francis N. Thorpe, ed., *The Federal and State Constitutions* . . . (7 vols., Washington, D.C., 1909).

Cross-references to Volumes of
The Documentary History of the Ratification of the Constitution

BoR	References to the series of volumes titled Bill of Rights are cited as "BoR" followed by the volume and page number. For example: "BoR, I, 200."
CC	References to *Commentaries on the Constitution* are cited as "CC" followed by the number of the document. For example: "CC:25."
CDR	References to the first volume, titled *Constitutional Documents and Records, 1776–1787*, are cited as "CDR" followed by the page number. For example: "CDR, 325."
Mfm or RCS Supplement	References to the supplements to the "RCS" volumes are referred to in two ways. In Volumes II–XXXI the supplements are cited by "Mfm" followed by the state and sometimes the document number. For example "Mfm:N.C. 2." The supplemental documents for The Confederation Congress Implements the Constitution are denoted by "Mfm:Cong. 1." The supplement documents for Pennsylvania have subsequently been published by the Wisconsin Historical Society Press, and those for Rhode Island by the Center for the Study of the American Constitution. Hence starting with Volume XXXII the change has been made to referring to the supplemental documents as "RCS: State Name or Congress, the actual page number(s)." For example "RCS:Pa. Supplement, 241–42." Book quality supplements for all fourteen states and Congress will soon be available at UW Digital Collections on the University of Wisconsin–Madison Libraries web site (https://digital.library.wisc.edu/1711.dl/Constitution). Access to the documents can be either through the Mfm document number or the supplement pages. However, the two Cumulative Index volumes (XXXV–XXXVI) use only the page numbers as well as this and all future Bill of Rights volumes.

RCS	References to the series of volumes titled *Ratification of the Constitution by the States* are cited as "RCS" followed by the abbreviation of the state and the page number. For example: "RCS:N.C., 200."

The Ratification of the Constitution and Bill of Rights

BILL OF RIGHTS [2]

Introduction

This second volume in the Bill of Rights series of the *Documentary History of the Ratification of the Constitution* covers the public debate over amendments to the Constitution from September 1787 through May 1788. During this time, all of the state legislatures, except Rhode Island's, called conventions to consider the new Constitution and eleven of these state conventions ratified the Constitution. Several important events occurred during this period. On 6 October, James Wilson of Philadelphia gave the first public speech by a former delegate to the Constitutional Convention in which he defended the Convention for going beyond its mandate in proposing a new form of government instead of merely amending the Articles of Confederation and for not including a bill of rights.

Another significant event during this time occurred four months later when the Massachusetts Convention, the sixth to meet, ratified the Constitution unconditionally in February but with nine recommendatory amendments. This method of ratifying served as a model followed by six of the remaining seven states. Without this method of ratification, it is doubtful that the Constitution would have been unconditionally adopted.

Other important events during this time included the publication of the objections of the three delegates to the Constitutional Convention who refused to sign the Constitution—Elbridge Gerry of Massachusetts and George Mason and Edmund Randolph of Virginia. Mason's objections circulated in manuscript for two months before they were published independently in three newspapers in November, while Gerry's and Randolph's objections were each incorporated in letters to their legislatures in mid-October that were then printed—Gerry's in a newspaper and Randolph's as a pamphlet. All three sets of objections were widely reprinted throughout the country. Richard Henry Lee of Virginia also circulated his objections which he had included in the form of a bill of rights and amendments to the Constitution during the debate in the Confederation Congress over transmitting the Constitution to the states in September. Although not included in Congress' journal, Lee sent his amendments and his bill of rights to several correspondents, including a letter to Governor Edmund Randolph which was printed and widely circulated in newspapers throughout the country.

After South Carolina became the eighth state to ratify the Constitution in mid-May, attention shifted to the three conventions scheduled to meet in June—Virginia, New York, and the second session of New Hampshire's convention. It was expected that New Hampshire's Con-

vention would ratify the Constitution, thus providing the necessary ninth state to implement the Constitution among the ratifying states, but it was also expected that New York would reject the Constitution, while Virginia remained uncertain. Also in mid-May, New York Antifederalist leaders organized as the Federal Republican Committee started corresponding with Antifederalist leaders in the states that had not yet ratified the Constitution hoping to coordinate their efforts to obtain amendments.

This volume contains over 250 documents—159 newspaper items, broadsides, and pamphlets, 59 letters, 25 speeches, and 5 proceedings of town and county meetings. A biographical gazetteer identifies people who either wrote letters, newspaper essays, or pamphlets, or delivered speeches concerning amendments to the Constitution. The biographical gazetteer covers both volumes one and two of the Bill of Rights series.

Cato I

New York Journal, 27 September 1787 (excerpt)[1]

Seven essays signed "Cato," the first of which was unnumbered, were published in the *New York Journal* between 27 September 1787 and 3 January 1788. The "Cato" essays were not widely reprinted. Only "Cato" I was reprinted in as many as five newspapers; and no newspaper reprinted the entire series. For the entire essay, see RCS:N.Y., 58–61.

Paul Leicester Ford ascribed the authorship to George Clinton on the basis of a copy of a letter to an unknown addressee, dated 18 October 1787 and signed "A. Hamilton," but supposed to be in the handwriting of New York Antifederalist John Lamb. The letter states: "Since my last the chief of the state party [i.e., Clinton] has declared his opposition to the government proposed, both in private conversation and in print. That you may judge of the *reason* and *fairness* of his views, I send you the two essays, with a reply by Cæsar. On further consideration it was concluded to abandon this personal form, and to take up the principles of the whole subject. These will be sent you as published, and might with advantage be republished in your gazettes" (Ford, *Essays*, 245).

Linda Grant De Pauw denies that Clinton was "Cato" and suggests that Abraham Yates, Jr. was the author (*The Eleventh Pillar: New York State and the Federal Constitution* [Ithaca, N.Y., 1966], 283–92).

Virtually all of the responses to "Cato" were by New York authors. Most criticisms were printed in the New York *Daily Advertiser:* "Cæsar" I–II, 1, 17 October (BoR, II, 16, 45–46); "Curtius" II–III, 18 October, 3 November (supplement); and "Americanus" I–VI, 2, 23, 30 November, 5–6, 12 December, and 12 January 1788 (RCS:N.Y., 97–102n, 174–81n; 171–74, 287–91n, 327–31, 354–60, 397–402, 603–8n). Other critics included: "Medium" and "Examiner" II–III, *New York Journal*, 21 November, 14, 19 December; and "The Syren's Songs," Lansingburgh *Northern Centinel*, 11, 18 December (RCS:N.Y., 275–76; 423–24n, 441–42; 392–94, 429–30).

To the CITIZENS *of the* STATE OF NEW-YORK.

. . . do not, because you admit that something must be done, adopt any thing—teach the members of that convention, that you are capable of a supervision of their conduct. The same medium that gave you this system, if it is erroneous, while the door is now open, can make amendments, or give you another, if it is required.—Your fate, and that of your posterity, depends on your present conduct—do not give the latter reason to curse you, nor yourselves cause of reprehension; as individuals you are ambitious of leaving behind you a good name, and it is the reflection, that you have done right in this life, that blunts the sharpness of death; the same principles would be a consolation to you, as patriots, in the hour of dissolution, that you would leave to your children a fair political inheritance, untouched by the vultures of power, which you had acquired by *an unshaken* perseverance in the cause of liberty—but how miserable the alternative—you would deprecate the ruin you had brought on yourselves—be the curse of posterity, and the scorn and scoff of nations. . . .

1. Reprinted: Philadelphia *Freeman's Journal* and Philadelphia *Independent Gazetteer*, 3 October; *Albany Gazette*, 4 October; Boston *American Herald*, 8 October; *Pittsburgh Gazette*, 10 November.

Richard Henry Lee's Proposed Amendments, 27 September 1787

On 17 September 1787 the Constitutional Convention adjourned and Governor Edmund Randolph wrote fellow Virginian Richard Henry Lee, then serving in Congress, explaining why he had refused to sign the Constitution. The following day George Mason wrote Lee and explained why he had not signed the Constitution. (Neither letter is extant.) The Constitution was read in Congress on 20 September and in a few days Lee was reported to be "forming propositions for essential alterations in the Constitution, which will, in effect, be to oppose it" (Edward Carrington to James Madison, 23 September, RCS: Va., 14).

On 26 and 27 September Congress debated the manner in which it should transmit the Constitution to the state legislatures. Lee and other critics of the Constitution wanted it sent with an indication that the Convention had violated the Articles of Confederation and the congressional resolution of 21 February 1787 calling the Convention (CC:1). Supporters of the Constitution wanted it transmitted to the states with congressional approbation. Toward the end of the debate on the 27th, Lee proposed several amendments to the Constitution, but Congress did not consider them or place them on the journals. James Madison, a delegate to both the Convention and Congress, asserted that the amendments corresponded to the ideas of George Mason (to George Washington, 30 September 1787, and to Thomas Jefferson, 24 October 1787, CC:114, p. 275; 187, p. 452. For Mason's objections, see BoR, II, 28–31.). On 28 September a compromise was fashioned as the states in Congress voted unanimously to send the Constitution to the state legislatures without appro-

bation or disapproval, but with the suggestion that the legislatures call ratifying conventions. Lee's amendments and all other derogatory statements about the Constitution were stricken from the Journal. (For the debates in Congress, see CC:95.)

Between 29 September and 5 October Lee sent copies of his amendments to Elbridge Gerry, George Mason, William Shippen, Jr., and Samuel Adams (CDR, 342; CC:117, 122, 132). On 16 October Lee wrote to Governor Edmund Randolph giving his opinion on the Constitution and enclosing a copy of his amendments. On his return to Virginia, Lee probably distributed other copies of the amendments to Antifederalists he conferred with in Philadelphia on 6 November, and to individuals in Chester, Pa., and Wilmington, Del. (RCS:Pa., 236; CC:255, 280). It is also likely that he discussed the amendments with George Washington when visiting Mount Vernon on 11 and 12 November.

Obviously, then, Lee had no intention of concealing his opposition to the Constitution, and, in fact, he allowed two of his correspondents to make the amendments public. He informed William Shippen, Jr. of Pennsylvania that "Perhaps" the amendments "may be submitted to the world at large" (CC: 122), while he invited Randolph to "make such use of this letter as you shall think to be for the public good." There is no record that Lee's letter and amendments circulated in manuscript in Pennsylvania, but, in Virginia, George Washington reported that manuscript copies of the letter "circulated with great industry" (to James Madison, 7 December, CC:328, p. 379).

On 16 November the Winchester *Virginia Gazette* printed Lee's amendments under the heading "*Observations on the Plan of Government, proposed by the Convention. By* R. H. L**, *Esquire.*" This printing generated little response. Three weeks later, on 6 December, the Petersburg *Virginia Gazette* published Lee's letter to Randolph, dated 16 October, and the accompanying amendments. The following day Washington sent Madison "a printed Copy" of Lee's letter (CC:328). (For a reference to Lee's letter and amendments published as a pamphlet and available in early December, see "Valerius," *Virginia Independent Chronicle*, 23 January 1788, BoR, II, 278–79. Also see "The State Soldier" III, *Virginia Independent Chronicle*, 12 March 1788, RCS:Va., 486.)

Between 20 December and 16 February 1788, the letter and amendments were reprinted in twelve newspapers: N.H. (1), Mass. (1), R.I. (1), N.Y. (2), Pa. (5), Md. (1), Va. (1). They also appeared in a pamphlet anthology published by Augustine Davis in Richmond, Va., in mid-December (CC:350), and in the December issue of the Philadelphia *American Museum.* The letter, without the amendments, was reprinted in three Charleston, S.C., newspapers from 7 to 14 January 1788, while the Massachusetts *Salem Mercury* published a summary and excerpts from the letter on 8 January. The Portland, Maine, *Cumberland Gazette* reprinted the *Mercury's* version on 24 January.

The responses to Lee's letter and amendments were voluminous. On 7 December Washington reported to James Madison that Lee's letter was "said to have had a bad influence." Madison responded on 20 December that "It does not appear to me to be a very formidable attack on the new Constitution, unless it should derive an influence from the names of the correspondents, which its intrinsic merits do not entitle it to" (CC:328, 359). James Madison, Sr. wrote his son that Lee's letter was "much approved of by some, & as much

ridiculed by others'' (30 January 1788, RCS:Va., 599). General William Russell, a recent member of the Virginia House of Delegates, agreed with Lee that amendments were needed to curb the extensive powers of Congress, while William Fleming of Botetourt County, a former member of the Virginia Senate and Council, supported Lee's belief that the Constitution endangered the privileges of the people (Russell to Fleming, 25 January 1788, and Fleming to Thomas Madison, 19 February [RCS:Va., 324, 383]. Fleming favored amendments in the Virginia Convention, but voted for ratification of the Constitution in June 1788.). A North Carolinian implied that Lee was ''a proud passionate man'' who was either ignorant or devious (Benjamin Hawkins to James Madison, 14 February, RCS:N.C., 67–68). And John Armstrong of Pennsylvania believed that Lee's letter was written with ''decency,'' but that it contained ''more of the air than the Substance of the Statesman'' (to George Washington, 20 February, CC:543).

About a dozen major essays were published in response to Lee's letter and amendments. Federalists refuted all of Lee's criticisms and rejected his proposal for a bill of rights to be drafted by a second general convention. They also accused Lee of being ambitious, lacking integrity and ability, and motivated by his hatred of Washington, who would become the first President under the new government. See ''One of the People,'' *Maryland Journal*, 25 December (BoR, II, 209–10n); ''An American'' (Tench Coxe), Philadelphia *Independent Gazetteer*, 28 December (CC:392–A); ''An Impartial Citizen,'' Petersburg *Virginia Gazette*, 10 January 1788 (BoR, II, 246–48); Charleston *Columbian Herald*, 10 January (RCS:S.C., 66–67n); ''An Independent Freeholder'' (Alexander White?), Winchester *Virginia Gazette*, 18, 25 January (BoR, II, 272–74); ''Valerius,'' ''The State Soldier'' III, and ''Cassius,'' *Virginia Independent Chronicle*, 23 January, 12 March, 2, 9, 23 April (BoR, II, 278–79, 409–10; RCS:Va., 483–91n, 641–47, 749–53); and ''A Native of Virginia,'' *Observations upon the Proposed Plan of Federal Government* . . . , 2 April (BoR, II, 396–400).

This Federalist criticism was ignored by Richard Henry Lee who explained ''I disdain to notice those Scribblers in the News papers altho they have honored me with their abuse—My attention to them will never exist whilst there is a Cat or a Spaniel in the House!'' (to Edmund Pendleton, 26 May 1788, (BoR, II, 475–79n).

The only substantial defense of Lee was by ''Brutus'' in the *Virginia Independent Chronicle* on 14 May 1788 (RCS:Va., 798–803).

The text of Lee's letter and amendments is the version that first appeared in the Petersburg *Virginia Gazette*, 6 December 1787. Because that issue of the newspaper has not been located, the transcription is from the *Pennsylvania Packet*, 20 December, the earliest known reprint. The *Packet* reprinted the letter and amendments under the dateline ''PETERSBURG, Dec. 6.''

Copy of a letter from the Hon. Richard Henry Lee, *Esq; one of the Delegates from this State in Congress, to his Excellency the Governor.*

New-York, Oct. 16, 1787.

DEAR SIR, I was duly honored with your favor of September 17th, from Philadelphia,[1] which should have been acknowledged long before

now, if the nature of the business that it related to had not required time.

The establishment of the new plan of government, in its present form, is a question that involves such immense consequences to the present times and to posterity, that it calls for the deepest attention of the best and wisest friends of their country and of mankind. If it be found good after mature deliberation, adopt it, if wrong, amend it at all events, for to say (as many do) that a bad government must be established for fear of anarchy, is really saying that we must kill ourselves for fear of dying. Experience and the actual state of things, shew that there is no difficulty in procuring a general convention; the late one being collected without any obstruction: Nor does external war, or internal discord prevent the most cool, collected, full, and fair discussion of this all-important subject. If with infinite ease, a convention was obtained to prepare a system, why may not another with equal ease be procured to make proper and necessary amendments? Good government is not the work of a short time, or of sudden thought. From *Moses* to *Montesquieu* the greatest geniuses have been employed on this difficult subject, and yet experience has shewn capital defects in the system produced for the government of mankind. But since it is neither prudent or easy to make frequent changes in government, and as bad governments have been generally found the most fixed; so it becomes of the last consequence to frame the first establishment upon ground the most unexceptionable, and such as the best theories with experience justify; not trusting as our new constitution does, and as many approve of doing, to time and future events to correct errors, that both reason and experience in similar cases, point out in the new system. It has hitherto been supposed a fundamental maxim that in governments rightly balanced, the different branches of legislature should be unconnected, and that the legislative and executive powers should be separate:—In the new constitution, the president and senate have all the executive and two thirds of the legislative power. In some weighty instances (as making all kinds of treaties which are to be the laws of the land) they have the whole legislative and executive powers. They jointly, appoint all officers civil and military, and they (the senate) try all impeachments either of their own members, or of the officers appointed by themselves.

Is there not a most formidable combination of power thus created in a few, and can the most critic eye, if a candid one, discover responsibility in this potent corps? Or will any sensible man say, that great power without responsibility can be given to rulers with safety to liberty? It is most clear that the parade of impeachment is nothing to them or

any of them—as little restraint is to be found, I presume from the fear of offending constituents.—The president is for four years duration (and Virginia for example) has one vote of thirteen in the choice of him, and this thirteenth vote not of the people, but electors, two removes from the people. The senate is a body of six years duration, and as in the choice of president, the largest state has but a thirteenth vote, so is it in the choice of senators.—This latter statement is adduced to shew that responsibility is as little to be apprehended from amenability to constituents, as from the terror of impeachment. You are, therefore, Sir, well warranted in saying, either a monarchy or aristocracy will be generated, perhaps the most grievous system of government may arise. It cannot be denied with truth, that this new constitution is, in its first principles, highly and dangerously oligarchic; and it is a point agreed that a government of the few, is, of all governments, the worst. The only check to be found in favor of the democratic principle in this system is, the house of representatives; which I believe may justly be called a mere shread or rag of representation: It being obvious to the least examination, that smallness of number and great comparative disparity of power, renders that house of little effect to promote good, or restrain bad government. But what is the power given to this ill constructed body? To judge of what may be for the general welfare, and such judgments when made, the acts of Congress become the supreme laws of the land. This seems a power co-extensive with every possible object of human legislation.—Yet there is no restraint in form of a bill of rights, to secure (what Doctor Blackstone calls) that residuum of human rights, which is not intended to be given up to society, and which indeed is not necessary to be given for any good social purpose.[2]—The rights of conscience, the freedom of the press, and the trial by jury are at mercy. It is there stated, that in criminal cases, the trial shall be by jury. But how? In the state. What then becomes of the jury of the vicinage or at least from the county in the first instance, for the states being from 50 to 700 miles in extent? This mode of trial even in criminal cases may be greatly impaired, and in civil causes the inference is strong, that it may be altogether omitted as the constitution positively assumes it in criminal, and is silent about it in civil causes.—Nay, it is more strongly discountenanced in civil cases by giving the supreme court in appeals, jurisdiction both as to law and fact. Judge Blackstone in his learned commentaries, art. jury trial, says, it is the most transcendant privilege which any subject can enjoy or wish for, that he cannot be affected either in his property, his liberty, his person, but by the unanimous consent of 12 of his neighbours and equals.[3] A constitution that I may venture to affirm has under providence, secured the

just liberties of this nation for a long succession of ages.—The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society. But if that be entirely *entrusted* to the magistracy, a select body of men, and those generally selected by the prince, or such as enjoy the highest offices of the state, these decisions in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity. It is not to be expected from human nature, that the few should always be attentive to the good of the many. The learned judge further says, that every tribunal selected for the decision of *facts*, is a step towards establishing aristocracy; the most oppressive of all governments.[4] The answer to these objections is, that the new legislature may provide remedies!—But as they may, so they may not, and if they did, a succeeding assembly may repeal the provisions.—The evil is found resting upon constitutional bottom, and the remedy upon the mutable ground of legislation, revocable at any annual meeting. It is the more unfortunate that this great security of human rights, the trial by jury, should be weakened in this system, as power is unnecessarily given in the second section of the third article, to call people from their own country in all cases of controversy about property between citizens of different states and foreigners, with citizens of the United States, to be tried in a distant court where the Congress may sit. For although inferior congressional courts may for the above purposes be instituted in the different states, yet this is a matter altogether in the pleasure of the new legislature, so that if they please not to institute them, or if they do not regulate the right of appeal reasonably, the people will be exposed to endless oppression, and the necessity of submitting in multitudes of cases, to pay unjust demands, rather than follow suitors, through great expence, to far distant tribunals, and to be determined upon there, as it may be, without a jury.—In this congressional legislature, a bare majority of votes can enact commercial laws, so that the representatives of the seven northern states, as they will have a majority, can by law create the most oppressive monopoly upon the five southern states, whose circumstances and productions are essentially different from theirs, although not a single man of these voters are the representatives of, or amenable to the people of the southern states. Can such a set of men be, with the least colour of truth called a representative of those they make laws for? It is supposed that the policy of the northern states will prevent such abuses. But how feeble, Sir, is policy when opposed to interest among trading people:—And what is the restraint arising from policy? Why that we may be forced by abuse to become shipbuilders!—But how long will it be before a people of agriculture can

produce ships sufficient to export such bulky commodities as ours, and of such extent; and if we had the ships, from whence are the seamen to come? 4000 of whom at least will be necessary in Virginia. In questions so liable to abuse, why was not the necessary vote put to two thirds of the members of the legislature? With the constitution came from the convention, so many members of that body to Congress, and of those too, who were among the most fiery zealots for their system, that the votes of three states being of them, two states divided by them, and many others mixed with them, it is easy to see that Congress could have little opinion upon the subject.[5] Some denied our right to make amendments, whilst others more moderate agreed to the right, but denied the expediency of amending; but it was plain that a majority was ready to send it on in terms of approbation—my judgment and conscience forbid the last, and therefore I moved the amendments that I have the honor to send you inclosed herewith, and demanded the yeas and nays that they might appear on the journal. This seemed to alarm and to prevent such appearance on the journal, it was agreed to transmit the constitution without a syllable of approbation or disapprobation; so that the term unanimously only applied to the transmission, as you will observe by attending to the terms of the resolve for transmitting. Upon the whole, Sir, my opinion is, that as this constitution abounds with useful regulations, at the same time that it is liable to strong and fundamental objections, the plan for us to pursue, will be to propose the necessary amendments, and express our willingness to adopt it with the amendments, and to suggest the calling of a new convention for the purpose of considering them. To this I see no well founded objection, but great safety and much good to be the probable result. I am perfectly satisfied that you make such use of this letter as you shall think to be for the public good; and now after begging your pardon for so great a trespass on your patience, and presenting my best respects to your lady, I will conclude with assuring you, that I am with the sincerest esteem and regard, dear Sir, your most affectionate and obedient servant, RICHARD HENRY LEE.

POSTSCRIPT.[6]

1. Not found.

2. Blackstone, *Commentaries*, Book I, chapter 1, p. 129.

3. *Ibid.*, Book III, chapter 23, p. 379.

4. *Ibid.*, p. 380.

5. For more on the individuals who sat in both the Convention and Congress and how they voted in Congress, see CDR, 322, 324–25, 334, and Arthur Lee to John Adams, 3 October (CC:127).

Richard Henry Lee had believed for some time that it was a conflict of interest for Convention delegates to sit in Congress and pass judgment on their work in the Conven-

tion. In fact, he had refused appointment to the Convention for this reason (to John Adams, 3 September, RCS:Va., 9). On 27 October Lee wrote Samuel Adams that his concern on this matter had been "fully verified" by the events in Congress respecting the transmission of the Constitution to the states (BoR, II, 64–66).

6. For the postscript (Lee's amendments), see BoR, I, 145–48.

Henry Knox to Henry Jackson
New York, post 28-September 1787 (excerpt)[1]

. . . It is easily demonstrable that if the proposed constitution should be rejected with the visionary hope of obtaining some unimportant amendments that such an event never can take place—There are influential men in almost every state who were a convention to be again chosen, would cause instructions to be given which would effectually prevent an agreament even of the majority of the States much less an unanamious assent—Indeed the dissensions on the Subject will most probably beget heats and animosities, that would in case of another convention prevent a general acqui[e]scence in any plan—

The present ship is unfit to encounter the rising storm, it will not answer even for the smooth surface of peace—it must sink—Let us then embark on board the new ship offered by the united wisdom of our country—If it should not on experiment work perfectly well, we shall have ~~plenty of material to repair it~~ the means of repairing or altering it in our possession—But if we should decline embracing the present offer because some of the rigging or ornamental parts are not to our liking, we ought to apprehend the most fatal consequences—and posterity will execrate us for our folly. . . .

1. Dft, Knox Papers, GLC0237.03778, The Gilder Lehrman Collection, The Gilder Lehrman Institute of American History, at the New-York Historical Society. Printed: RCS:Mass., 26–28. The draft apparently was written shortly after the Confederation Congress adopted its resolution of 28 September requesting that the state legislatures call conventions to consider the Constitution (CC:95). No addressee appears in the draft, but the letter was probably written to Henry Jackson, who, along with Knox, was a member of the "Stone house Club" mentioned in the last paragraph of the letter not printed here. (See also Jackson to Knox, 16 January 1788, RCS:Mass., 730–31.)

James Madison to George Washington
New York, 30 September 1787 (excerpt)[1]

I found on my arrival here[2] that certain ideas unfavorable to the Act of the Convention which had created difficulties in that body, had made their way into Congress. They were patronised chiefly by Mr. R.H.L.[3] and Mr. Dane of Massts.[4] It was first urged that as the new Constitution was more than an Alteration of the Articles of Confederation under

which Congress acted, and even subverted these articles altogether, there was a Constitutional impropriety in their taking any positive agency in the work.[5] The answer given was that the Resolution of Congress in Feby.[6] had recommended the Convention as the best mean of obtaining a firm *national Government*; that as the powers of the Convention were defined by their Commissions in nearly the same terms with the powers of Congress given by the Confederation on the subject of alterations, Congress were not more restrained from acceding to the new plan, than the Convention were from proposing it. If the plan was within the powers of the Convention it was within those of Congress; if beyond those powers, the same necessity which justified the Convention would justify Congress; and a failure of Congress to Concur in what was done, would imply either that the Convention had done wrong in ~~proposing a *national* Government~~ exceeding their powers, or that the Government proposed was in itself liable to insuperable objections; that such an inference would be the more natural, as Congress had never scrupled to recommend measures foreign to their constitutional functions, whenever the public good seemed to require it; and had in several instances, particularly in the establishment of the new Western Governments, exercised assumed powers of a very high & delicate nature,[7] under motives infinitely less urgent than the present state of our affairs, if any faith were due to the representations made by Congress themselves, ecchoed by 12 States in the Union, and confirmed by the general voice of the people.—An attempt was made in the next place by R.H.L. to amend the Act of the Convention before it should go forth from Congress. He proposed a bill of Rights—provision for juries in civil cases & several other things corresponding with the ideas of Col. M[8]—He was supported by Mr. Me—Smith[9] of this State. It was contended that Congress had an undoubted right to insert amendments, and that it was their duty to make use of it in a case where the essential guards of liberty had been omitted. On the other side the right of Congress was not denied, but the inexpediency of exerting it was urged on the following grounds. 1. that every circumstance indicated that the introduction of Congress as a party to the reform, was intended by the States merely as a matter of form and respect. 2. that it was evident from the contradictory objections which had been expressed by the different members who had animadverted on the plan, that a discussion of its merits would consume much time, without producing agreement even among its adversaries. 3. that it was clearly the intention of the States that the plan to be proposed should be the ~~joint~~ act of the Convention with the assent of Congress, which could not be the case, if alterations were made, the Convention being

no longer in existence to adopt them. 4. that as the Act of the Convention, when altered would instantly become the mere act of Congress, and must be proposed by them as such, and of course be addressed to the Legislatures, not conventions of the States, and require the ratification of thirteen instead of nine States, and as the unaltered act would go forth to the States directly from the Convention under the auspices of that body—Some States might ratify one & some the other of the plans, and confusion & disappointment be the least evils that could ensue. These difficulties which at one time threatened a serious division in Congs. and popular alterations with the yeas & nays on the journals, were at length fortunately terminated by the following Resolution—"Congress having recd. the Report of the Convention lately assembled in Philada., Resold. *unanimously* that the said Report, with the Resolutions & letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates chosen in each State by the people thereof, in conformity to the Resolves of the Convention made & provided in that case." Eleven States were present, the absent ones R.I. & Maryland. A more direct approbation would have been of advantage in this & some other States, where stress will be laid on the agency of Congress in the matter, and a handle taken by adversaries of any ambiguity on the subject. With regard to Virginia & some other States, reserve on the part of Congress will do no injury. The circumstance of unanimity must be favorable every where. . . .

1. RC, Washington Papers, DLC. Printed: CC:114. For Washington's attitude toward the congressional resolution of 28 September transmitting the Constitution to the states, see his reply of 10 October 1787 (RCS:Va., 49–51n). For the congressional debate over this resolution, see "The Confederation Congress and the Constitution," 26–28 September 1787 (CDR, 320–53).

2. Madison arrived in New York City on 24 September and took his seat in Congress the next day.

3. Because of Lee's prominent role in Congress, France's principal diplomat in America, charge d'affaires Louis-Guillaume Otto, placed Lee "at the head of the opposition." Otto claimed that Lee "does not find the situation of the United States so hopeless, that one might have need of recourse to violent remedies. He disapproves especially that the government might have been accorded immense powers without preceding the Constitution with a bill of rights, which has always been regarded as a palladium of a free people. 'If,' he said, 'in place of a virtuous and patriotic President we are given a William the Conqueror, what will become of liberty? How to prevent usurpation? Where is the contract between the nation and the government? The Constitution makes mention only of those who govern, never of the rights of the governed.' This new Gracchus, My Lord, has all the necessary talents for making an impression. He has against him men equally distinguished by their merit, their learning, their services; but he pleads the cause of the people" (to the Comte de Montmorin, 23 October 1787, CDR, 352).

4. Nathan Dane, a Beverly, Mass., lawyer, opposed the Constitution well into 1788, but in July he became reconciled to it after ten states had ratified (see CC:95; and CC:392, note 12).

5. This argument was used in the Constitutional Convention by several delegates. (See Farrand, I, 42–43, 177–78, 249, 250, 336.)

6. A reference to Congress' resolution of 21 February 1787 calling the Constitutional Convention (CC:1).

7. For the ordinances for the sale and government of the Western Territory that were adopted in April 1784, May 1785, and July 1787, see CDR, 150–53, 156–63, 168–74.

8. See "George Mason: Objections to the Constitution," 7 October 1787 (BoR, II, 28–32).

9. Melancton Smith, a New York City merchant, was one of the Antifederalist leaders in the New York Convention, referring to himself as the manager of that body.

Richard Henry Lee to George Mason
New York, 1 October 1787 (excerpt)[1]

. . . This constitution has a great many excellent Regulations in it and if it could be reasonably amended would be a fine System—As it is, I think 'tis past doubt, that if it should be established, either a tyranny will result from it, or it will be prevented by a Civil war—I am clearly of opinion with you that it should be sent back with amendments Reasonable and Assent to it with held until such amendments are admitted—You are well acquainted with Mr. Stone[2] & others of influence in Maryland—I think it will be a great point to get Maryld. & Virginia to join in the plan of Amendments & return it with them—If you are in correspondence with our Chancelor Pendleton it will be of much use to furnish him with the objections, and if he approves our plan, his opinion will have great weight with our Convention, and I am told that his relation Judge Pendleton of South Carolina[3] has decided weight in that State & that he is sensible & independent—How important will it be then to procure his union with our plan, which might probably be the case, if our Chancelor was to write largely & pressingly to him on the subject; that if possible it may be amended there also. . . .

1. RC, Mason Papers, Rare Book Room, DLC. For the entire letter, see RCS:Va., 28–30. Enclosed in Lee's letter was a two-page copy of his amendments to the Constitution. (For Lee's amendments, see BoR, I, 145–48.) Lee's letter to Mason is addressed "George Mason esquire/of Gunston Hall in/Fairfax County/Virginia." In another person's handwriting, the words "P[er] Post" and "Richmond" were added to the address page, and the letter was postmarked "ALEX, NOV 2," indicating that it was forwarded to Mason who was attending the legislative session in Richmond. (For Lee's concern about his letters being "stopt" in their passage through the post office, see his 27 October letter to Samuel Adams, BoR, II, 64.)

2. Probably Thomas Stone, a Maryland state senator from Charles County, who had been elected to the Constitutional Convention but declined to serve. Stone died on 5 October.

3. Henry Pendleton, a nephew of Edmund Pendleton, was a judge of the South Carolina Court of Common Pleas. In May 1788 he voted to ratify the Constitution in the South Carolina Convention.

Cæsar I
New York Daily Advertiser, 1 October 1787 (excerpt)

Two unnumbered essays signed "Cæsar" were published in the *Daily Advertiser* on 1 and 17 October. The first essay, which criticized "Cato" I (BoR, II, 4–5), was reprinted in the Philadelphia *Independent Gazetteer*, 6 October; *Albany Gazette*, 11 October; *Massachusetts Gazette*, 12 October; and *New York Journal*, 18 October (extraordinary). For the entire essay, see RCS:N.Y., 68–71.

Paul Leicester Ford attributed the "Cæsar" essays to Alexander Hamilton largely because of a copy of a letter said to have been written by Hamilton on 18 October. (See headnote to "Cato" I, BoR, II, 4.) Jacob E. Cooke, however, doubted the authenticity of the letter and that Hamilton wrote the "Cæsar" essays ("Alexander Hamilton's Authorship of the 'Cæsar' Letters," *William and Mary Quarterly*, 3rd series, XVII [1960], 78–85).

For articles praising "Cæsar," see "Curtius" II and "A Man of No Party," *Daily Advertiser*, 18, 19, 20 October (RCS:N.Y., 97–102n; RCS:N.Y. Supplement, 81–82). For criticisms, see "Cato" II and "A Countryman" IV (DeWitt Clinton), *New York Journal*, 11 October 1787 and 10 January 1788, respectively (RCS:N.Y., 79–83n, 597–600).

. . . how can Cato say, "That the door is *now open* to receive any amendments, or to give us *another Constitution*, if required." I believe he has advanced *this* without proper authority. I am inclined to believe that the *door of recommendation is shut, and cannot be opened by the same men*; that the Convention, in one word, is *dissolved*: if so, we must reject, IN TOTO, or *vice versa*; just take it as it is; and be thankful. . . .

Address of the Seceding Pennsylvania Assemblymen
Philadelphia, 2 October 1787 (excerpts)

The Pennsylvania Assembly received the Constitution on 18 September 1787, the day after the Constitutional Convention adjourned. A prime concern facing the Assembly was whether or not to remain in session until after Congress acted on the Constitution. Assemblymen knew that Congress was considering the Constitution and that most delegates to Congress supported it. Federalists, who controlled the Assembly, wanted to call a state convention by 29 September, the day the Assembly intended to adjourn *sine die*. Antifederalists wanted to await the election of a new Assembly. To prevent the Assembly from completing its call of a convention, nineteen assemblymen, almost all Antifederalists, refused to attend the afternoon session on 28 September, thus preventing a quorum. The next day, Federalists used a mob to forcibly return two of the seceding assemblymen; whereupon, with a quorum now attained, the Assembly adopted its resolutions calling a convention.

Most of the seceding assemblymen signed an address dated 29 September, giving their version of the events of 28–29 September and outlining their objections to the Constitution. Despite pressure from Philadelphia Federalists, Eleazer Oswald of the Philadelphia *Independent Gazetteer* printed the address as a broadside on 2 October. The broadside was entitled: *An Address of the Subscribing Members of the late House of Representatives of the Commonwealth of Pennsylvania to their Constituents* (Evans 45026). Oswald also printed the address in his newspaper on 3 October, and within a month it was reprinted twelve times in Pennsylvania, including once in the *American Museum* and once as a German broadside. By 8 November, the address was also reprinted sixteen times outside of Pennsylvania: Vt. (1), Mass. (5), R.I. (2), N.Y. (5), Del. (1), Md. (1), Va. (1). For the entire address, see RCS:Pa. 112–17. For the most comprehensive response to the address, see a pamphlet written by Pelatiah Webster ("A Citizen of Philadelphia," *Remarks on the Address of Sixteen Members*, 18 October 1787, BoR, II, 52–54). For other responses to the address, see the headnote to CC:125.

. . . We cannot conclude without requesting you to turn your serious attention to the government now offered to your consideration; "We are persuaded that a free and candid discussion of any subject tends greatly to the improvement of knowledge, and that a matter in which the public are so deeply interested cannot be too well understood." A good constitution and government is "a blessing from heaven, and the right of posterity and mankind; suffer then we intreat you, no interested motive, sinister view or improper influence to direct your determinations or biass your Judgments." Provide yourselves with the new constitution offered to you by the Convention, look it over with attention that you be enabled to think for yourselves. . . .

You will also in your deliberations on this important business judge, whether the liberty of the press may be considered as a blessing or a curse in a free government, and whether a declaration for the preservation of it is necessary? or whether in a plan of government any declaration of rights should be prefixed or inserted? You will be able likewise to determine, whether in a free government there ought or ought not to be any provision against a standing army in time of peace? or whether the trial by jury in civil causes is become dangerous and ought to be abolished? . . .

The matter will be before you, and you will be able to judge for yourselves. "Shew that you seek not yourselves, but the good of your country,—and may He who alone has dominion over the passions and understandings of men enlighten and direct you aright, that posterity may bless God for the Wisdom of their ancestors."

Richard Henry Lee to Samuel Adams
New York, 5 October 1787[1]

Having long toiled with you my dear friend in the Vineyard of liberty, I do with great pleasure submit to your wisdom and patriotism, the objections that prevail in my mind against the new Constitution proposed for federal government—Which objections I did propose to Congress in form of amendments to be discussed, and that such as were approved might be forwarded to the States with the Convention system. You will have been informed by other hands why these amendments were not considered and do not appear on the Journal, and the reasons that influenced a bare *transmission* of the Convention plan, without a syllable of approbation or disapprobation on the part of Congress. I suppose my dear Sir, that the good people of the U. States in their late generous contest, contended for free government in the fullest, clearest, and strongest sense. That they had no idea of being brought under despotic rule under the notion of "Strong government," or in form of *elective despotism*: Chains being still Chains, whether made of gold or of iron.

The corrupting nature of power, and its insatiable appetite for increase, hath proved the necessity, and procured the adoption of the strongest and most express declarations of that *Residuum* of natural rights, which is not intended to be given up to Society; and which indeed is not necessary to be given for any good social purpose. In a government therefore, where the power of judging what shall be for the *general wellfare*, which goes to every object of human legislation; and where the laws of such Judges shall be the *supreme Law of the Land*: it seems to be of the last consequence to declare in most explicit terms the reservations above alluded to. So much for the propriety of a Bill of Rights as a necessary bottom to this new system—It is in vain to say that the defects in this new Constitution may be remedied by the Legislature created by it. The remedy, as it may, as it may not be applied—And if it should, a subsequent Assembly may repeal the Acts of its predecessor for the parliamentary doctrine is "quod legis posteriores priores contrarias abrogant" 4 Inst. 43.[2] Surely this is not a ground upon which a wise and good man would choose to rest the dearest rights of human nature—Indeed, some capital defects are not within the compass of legislative redress—The Oligarchic tendency from the combination of President, V. President, & Senate, is a ruin not within legislative remedy. Nor is the partial right of voting in the Senate, or the defective numbers in the house of Representatives. It is of little consequence to say that the numbers in the last mentioned Assembly

will increase with the population of these States, because what may happen in twenty five or 27 years hence is poor alleviation of evil, that the intermediate time is big with; for it often happens that abuse under the name of Use is rivetted upon Mankind. Nor can a good reason be assigned for establishing a bad, instead of a good government, in the first instance; because time may amend the bad—Men do not choose to be sick because it may happen that physic may cure them—Suppose that good men came first to the administration of this government; and that they should see, or think they see, a necessity for trying criminally a Man without giving him his Jury of the Vicinage; or that the freedom of the Press should be restrained because it disturbed the operations of the new government—the mutilation of the jury trial, and the restraint of the Press would then follow for good purposes as it should seem, and by good men—But these precedents will be followed by bad men to sacrifice honest and innocent men; and to suppress the exertions of the Press for wicked and tyrannic purposes—it being certainly true that "Omnia mala exempla ex bonis orta sunt: sed ubi imperium ad ignaros aut minus bonos pervinit, novum illud exemplum ab dignis et idoneis ad indignos et non idoneos fertur."[3] In proof of this, we know that the wise and good Lord Holt, to support King William and Revolution principles, produced doctrines in a case of Libel (King against Bear) subversive both of law and sound sense; which his Successor Lord Mannsfield (in the case of Woodfall) would have availed himself of for the restraint of the Press and the ruin of liberty.[4] It would appear therefore, that the consideration of human perversity renders it necessary for human safety, that in the first place, power not requisite should not be given, and in the next place that necessary powers should be carefully guarded. How far this is done in the New Constitution I submit to your wise and attentive consideration. Whether, for the present, it may not be sufficient so to alter the Confederation as to allow Congress full liberty to make Treaties by removing the restraining clauses; by giving the Impost for a limited time, and the power of Regulating trade; is a question that deserves to be considered.

But I think the new Constitution (properly amended) as it contains many good regulations, may be admitted—And why may not such indispensable amendments be proposed by the Conventions and returned With the new plan to Congress that a new general Convention may so weave them into the proffer'd system as that a Web may be produced fit for freemen to wear? If such amendments were proposed by a Capital state or two, & a willingness expressed to agree with the plan so amended; I cannot see why it may not be effected. It is a mere

begging the question to suppose, as some do, that only this Moment and this Measure will do—But why so, there being no war external or internal to prevent due deliberation on this most momentous business—The public papers will inform you what violence has been practised by the Agitators of this new System in Philadelphia to drive on its immediate adoption—As if the subject of Government were a business of passion, instead of cool, sober, and intense consideration.[5] I shall not leave this place before the 4th of November—in the mean time I shall be happy to hear from you—My best compliments are presented to Mrs. Adams, and I pray to be remembered to Gen. [James] Warren, Mr. [James] Lovell & the good Doctor [Samuel] Holten when you see him.

1. RC, Samuel Adams Papers, NN. Lee enclosed a copy of the amendments to the Constitution which he had presented to Congress on 27 September (BoR, I, 145). The enclosure is in the Samuel Adams Papers, NN. On 27 October Lee wrote Adams again (BoR, II, 64) and sent him a copy of his 5 October letter, suspecting that Adams might not have received the original. Adams answered both of Lee's letters on 3 December and outlined his objections to the Constitution (BoR, II, 180–81).

2. Lee quotes from the fourth of Sir Edward Coke's four *Institutes* (1628–44). Coke (1552–1634) was Lord Chief Justice of England and a staunch advocate of the common law. He was one of the principal defenders of the rights of Parliament and the people against the attempts of James I and Charles I to extend the royal prerogative. He also helped frame the Petition of Right (1628). The English translation of the Latin is "because subsequent laws nullify earlier laws which are contrary."

3. "All bad precedents have originated from good measure; but when power comes to those inexperienced in exercising it or to men not so virtuous, that new precedent is transferred from those deserving and fit for such punishment to the undeserving and unfit" (Sallust, *The War with Catiline*, 114–15).

4. In *Rex* v. *Beare* (1698) and *Rex* v. *Woodfall* (1770), courts refused to abide by the verdict of juries in cases involving seditious libel against the Crown. A jury found Beare guilty *only* of collecting and copying libels, neither of which was considered a criminal act, and not guilty of composing libels, which was a criminal act. However, Lord John Holt (1642–1710), Chief Justice of King's Bench, ruled that the copying of a libel was the making of one. Despite the clear intent of the jury, Holt and his fellow judges found Beare guilty of libel and fined him.

Woodfall was one of several London printers charged with seditious libel for printing one of the letters of "Junius" which attacked the King. Lord Mansfield (William Murray, 1705–1793), Chief Justice of King's Bench, instructed the jury that it was to consider two points: whether Woodfall had published the letter and whether the innuendoes and blank spaces in the letter referred to the King and his ministers. The issue of whether or not the letter was a libel published with malicious intent, Mansfield reserved to the court. The jury found Woodfall guilty of printing and publishing *only*, implying that Woodfall was not guilty of libel. Since the jury's meaning was unclear and the court term was nearing an end, Mansfield and the other justices took the verdict under advisement. The next term, Mansfield, speaking for the court, set the verdict aside and ordered a new trial. Only when two other printers were acquitted outright for the same offense did the Crown decide against further prosecution.

5. For the violence in Philadelphia, see CC:125.

Centinel I

Philadelphia Independent Gazetteer, 5 October 1787 (excerpts)[1]

Between 5 October 1787 and 9 April 1788 eighteen Antifederalist essays signed "Centinel" were published in Philadelphia. The *Independent Gazetteer* printed all of the essays except II; the *Freeman's Journal* all but IV–VI and XII; the *Pennsylvania Herald* only III and IX; and the *Pennsylvania Packet* only VI.

Contemporaries attributed the "Centinel" essays to George Bryan (1731–1791), a justice of the Pennsylvania Supreme Court and one of the leaders of the state Constitutionalist Party. Bryan was first charged with writing the essays in an extract of a letter published in the *Pennsylvania Gazette* on 31 October 1787 (RCS:Pa. Supplement, 485–86). For the most part, this attribution was accepted throughout the United States in 1787 and 1788. However, William Shippen, Jr. believed that Bryan was part of "a club" that wrote the essays (RCS:Pa., 288), and George Turner denied a rumor that he was "Centinel" (*Independent Gazetteer* and *Freeman's Journal*, 2 April, RCS:Pa. Supplement, 1151). In essay XVIII, "Centinel" himself denied that Bryan was the author.

The "Centinel" essays, despite contemporary opinion, appear to have been written by Samuel Bryan. Bryan identified himself as "Centinel" in four letters written between 1790 and 1807 in which he attempted to obtain a federal or state office for himself or his father. In 1790 Bryan wrote to New York Governor George Clinton that "I have not the honor of being personally known to your Excellency, but . . . I flatter myself that in the character of Centinel I have been honored with your approbation and esteem" (McMaster and Stone, 7n). In the same year, Bryan spoke with Pennsylvania Governor Thomas Mifflin and learned that he had not offended the governor in one of the "Centinel" essays (to James Hutchinson, 18 December 1790, Albert Gallatin Papers, NHi). On 27 February 1801 Bryan wrote Thomas Jefferson that "I was the first person who under the signature of 'Centinel' pointed out the defects of the federal Constitution" (RG 59, General Records of the Department of State, Letters of Application and Recommendation during the Administration of Thomas Jefferson, 1801–1809, DNA. See also Bryan to Jefferson, 24 July 1807, *ibid.*).

The "Centinel" essays analyzed the nature and provisions of the Constitution and the motives and methods of its framers and supporters. "Centinel's" language was blunt, provocative, and vituperative. Perhaps the essence of the essays is in a statement found in the fourth essay: "The evil genius of darkness presided at its [the Constitution's] birth, it came forth under the veil of mystery, its true features being carefully concealed, and every deceptive art has been and is practising to have this spurious brat received as the genuine offspring of heaven-born liberty." "Centinel" also charged that the Constitution "is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed" (No. I).

"Centinel's" objections to the Constitution, found largely in the first five essays, presented many of the standard Antifederalist arguments. The Constitution would establish a consolidated government and would annihilate the sovereignty of the states. The powers of Congress were too vast, especially in the areas of taxation and the military. The Senate was an aristocratic body.

The federal judiciary would destroy the state judiciaries. Most important, the Constitution lacked a bill of rights.

In the use of personal invective, ''Centinel'' was perhaps unequalled among both Antifederalists and Federalists. He considered the members of the Constitutional Convention to be ''*conspirators*'' (No. XII). The supporters of the Constitution were described as ''crafty and aspiring despots,'' ''avaricious office-hunters,'' and ''false detestable *patriots*'' (Nos. II, VI, and XVIII). ''Centinel's'' personal invective extended even to George Washington and Benjamin Franklin. He declared that Washington had been duped in the Convention and that Franklin was too old to know what he had been doing (No. I).

Pennsylvania Federalists reacted sharply to ''Centinel,'' who had come to symbolize those individuals unequivocally opposed to the Constitution. To attack him was to attack all Antifederalists. Pennsylvania Federalists answered ''Centinel's'' substantive criticisms point-by-point and returned his personal vilifications. In particular, they expressed outrage over his comments on Washington and Franklin and they denied that the Constitution endangered the rights and liberties of the people. They also attacked ''Centinel'' because they believed him to be the influential George Bryan. ''Gomez'' referred to Bryan (i.e., ''Centinel'') as ''a poisoned rat,'' while ''X'' called him ''the indefatigable Monster'' (*Pennsylvania Gazette*, 26 December 1787 and 26 March 1788, RCS:Pa. Supplement, 752, 1113).

For some of the principal Pennsylvania responses to ''Centinel'' in October and November 1787, see James Wilson's 6 October speech (immediately below); and *Pennsylvania Gazette*, 31 October, 14 November (CC:218, 258). See also RCS:Pa., 181–82, 201; and RCS:Pa. Supplement, 281–82, 438–44, 451–57, 485–86, 504–12. As ''Centinel'' published more essays, the attacks by Pennsylvania Federalists continued. For examples between December 1787 and March 1788, see RCS:Pa. Supplement, 806, 813–15, 822–25, 838–39, 855–56, 857–59, 921–22.

For comments on and criticisms of the ''Centinel'' essays outside Pennsylvania, see ''A Man of No Party'' and ''Detector,'' New York *Daily Advertiser*, 20 October and 24 November (RCS:N.Y. Supplement, 82; RCS:N.Y., 298–302); ''Uncus,'' *Maryland Journal*, 9 November (BoR, II, 111–15n); Charleston *Columbian Herald*, 3 December (RCS:S.C., 50–51); *Albany Gazette*, 20 December (RCS:N.Y., 444); ''New England,'' *Connecticut Courant*, 24 December (CC:372); ''A Spectator,'' Lansingburgh *Northern Centinel*, 1 January 1788 (RCS:N.Y., 561–63); *Massachusetts Centinel*, 19 March (RCS:Mass., 1725–26); and ''A Virginian,'' *Norfolk and Portsmouth Journal*, 2 April (RCS:Va., 638–39).

The defenses of ''Centinel'' were by no means as numerous as the attacks. For examples, see ''Philadelphiensis'' I and ''One of the Whigs of 1788,'' *Independent Gazetteer*, 7 November, 19, 25 January 1788 (CC:237–A; RCS:Pa. Supplement, 810, 829–30); ''A Federal Republican,'' *A Review of the Constitution*, 28 November (BoR, II, 138–40); and ''A Countryman'' VI (Hugh Hughes) and an unsigned essay, *New York Journal*, 14 February, 29 March 1788 (RCS:N.Y., 776–82n, 892).

The ''Centinel'' essays were distributed widely as newspaper reprints, broadsides, or parts of pamphlet anthologies. ''Centinel'' I was by far the most widely circulated essay in the series. It was printed in whole or in part in nineteen newspapers in sixteen towns, most of them north of Pennsylvania (see also

note 1 below). Besides "Centinel" I, a few other numbers also circulated widely. Number II was reprinted six times; III and VII five times each. The *New York Journal* reprinted every number save XVII, while the *New York Morning Post* and Boston *American Herald* each reprinted five numbers.

Newspaper circulation was lightest in the Southern States. "Centinel" I and II were reprinted in Baltimore, Richmond, and Charleston. The Charleston reprintings were apparently in the no longer extant issues of the daily *City Gazette*. A Charlestonian stated that "There have been some pieces in the Newspapers for these three days past against the new government. . . . These pieces are signed 'Centinel'" (Margaret Izard Manigault to Gabriel Manigault, 12 November, RCS:S.C., 40). The essays also circulated in Georgia. On 17 December a Georgian declared that Elbridge Gerry's and "Centinel's" objections to the Constitution were "very weighty" (Lachlan McIntosh to John Wereat, RCS:Ga., 260. For Gerry, see BoR, II, 50–52.).

Several numbers of "Centinel" appeared as broadsides and in pamphlets in Philadelphia, New York City, and Richmond. "Centinel" I and II were reprinted as broadsides by Francis Bailey of the Philadelphia *Freeman's Journal*, while "Centinel" V was so done by Eleazer Oswald of the Philadelphia *Independent Gazetteer*. Bailey's broadside of "Centinel" I omitted the first two paragraphs. "Centinel" I was also struck as a German-language broadside, but without the derogatory passages about Washington and Franklin—deletions noted by the *Pennsylvania Gazette* on 24 and 31 October (RCS:Pa., 201; CC:218).

On 1 November "Centinel" II and "Timoleon" (BoR, II, 86–90) were published in an extraordinary issue of the *New York Journal*. Soon after, the printer of the *Journal* also published these two items and "Centinel" I in a two-page broadside. Antifederalists probably circulated this broadside, and the extraordinary issue of the *Journal*, in New York City, on Long Island, and in the Hudson River Valley as far north as Albany and Lansingburgh. Perhaps hundreds of broadsides were also sent into Connecticut, an action denounced by Connecticut Federalists (*New Haven Gazette*, 22 November and 13 December, CC:283–A, C, and RCS:Conn., 330, 458, 470–71, 495–96, 507, 514). In December "Centinel" I and II were printed in a Richmond pamphlet anthology entitled *Various Extracts on the Fœderal Government* . . . (CC:350). And finally in April 1788 New York Antifederalists distributed "Centinel" I to IX in a pamphlet anthology entitled *Observations on the Proposed Constitution* . . . (Evans 21344). The New York Antifederal committee forwarded 225 copies to local county committees throughout the state (RCS:N.Y., 894–901).

The "Centinel" series was revived twice. "Centinel" XIX–XXIV, printed in the *Independent Gazetteer* from 7 October to 24 November 1788, advocated the election of men to the first federal Congress who would support amendments to the U.S. Constitution to protect the rights and property of the people and the integrity of the states. Numbers XXV–XXXVII, published in the *Gazetteer* from 27 August to 11 November 1789, opposed the revision of the Pennsylvania constitution of 1776 by a state convention and criticized the amendments to the U.S. Constitution proposed by the first federal Congress as "a further opiate to lull the awakened jealousies of the freemen of America."

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

TO THE FREEMEN OF PENNSYLVANIA.

Friends, Countrymen and *Fellow Citizens*, Permit one of yourselves to put you in mind of certain *liberties* and *privileges* secured to you by the constitution of this commonwealth, and to beg your serious attention to his uninterested opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government,[2] secures you to 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 "that in controversies respecting property, and in suits between man and man, the parties have a right *to trial by jury, which ought to be held sacred.*" It also provides and declares, "*that the people have a right of* FREEDOM OF SPEECH, *and of* WRITING *and* PUBLISHING *their sentiments, therefore* THE FREEDOM OF THE PRESS OUGHT NOT TO BE RESTRAINED." The constitution of Pennsylvania is *yet* in existence, *as yet* you have the right to *freedom of speech*, and of *publishing your sentiments*. How long those rights will appertain to you, you yourselves are called upon to say, whether your *houses* shall continue to be your *castles*; whether your *papers*, your *persons* and your *property*, are to be held sacred and free from *general warrants*, you are now to determine. Whether the *trial by jury* is to continue as your birth-right, the freemen of Pennsylvania, nay, of all America, are now called upon to declare.

Without presuming upon my own judgement, I cannot think it an unwarrantable presumption to offer my private opinion, and call upon others for their's; and if I use my pen with the boldness of a freeman, it is because I know that *the liberty of the press yet remains unviolated*, and *juries yet are judges*. . . .

The framers of it [i.e., the Constitution]; actuated by the true spirit of such a government, which ever abominates and suppresses all free enquiry and discussion, have made no provision for the *liberty of the press*, that grand *palladium of freedom*, and *scourge of tyrants*; but observed a total silence on that head. It is the opinion of some great writers, that if the liberty of the press, by an institution of religion, or otherwise, could be rendered *sacred*, even in *Turkey*, that despotism would fly before it. And it is worthy of remark, that there is no declaration of personal rights, premised in most free constitutions; and that trial by *jury* in *civil* cases is taken away; for what other construction can be put on the following, viz. Article III. Sect. 2d. "In all cases affecting ambassa-

dors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have *original* jurisdiction. In all the other cases above mentioned, the Supreme Court shall have *appellate* jurisdiction, both as to *law and fact?*'' It would be a novelty in jurisprudence, as well as evidently improper to allow an appeal from the verdict of a jury, on the matter of fact; therefore, it implies and allows of a dismission of the jury in civil cases, and especially when it is considered, that jury trial in criminal cases is expresly stipulated for, but not in civil cases. . . .

1. Reprinted in thirteen newspapers by 3 January 1788: Mass. (2), R.I. (1), N.Y. (4), Pa. (2), Del. (1), Md. (1), Va. (2). Also reprinted as a broadside twice in Philadelphia and once in New York City; and in pamphlet anthologies in New York City and Richmond.

2. For the Pennsylvania Declaration of Rights and constitution of 1776, see BoR, I, 94–99n.

James Wilson: Speech at a Public Meeting Philadelphia, State House Yard, 6 October 1787 (excerpt)[1]

James Wilson (1742–1798), a Philadelphia lawyer, served in Congress, 1775–77, 1783, and 1785–86, and signed the Declaration of Independence. Throughout the 1780s, he advocated strengthening the powers of the central government and was a principal spokesman for Pennsylvania's Republican Party.

After the Constitutional Convention adjourned, Wilson was the first Convention delegate to defend the Constitution publicly. On Saturday evening, 6 October, he delivered a speech before ''a very great concourse of people'' at a public meeting in the Pennsylvania State House yard to nominate candidates to represent the city of Philadelphia in the Pennsylvania Assembly.

On 9 October Wilson's speech was published in an ''extra'' issue of the *Pennsylvania Herald*. Alexander J. Dallas, the editor of the *Herald*, described the speech as ''*excellent*'' and declared that ''It is the first authoritative explanation of the principles of the NEW FEDERAL CONSTITUTION, and as it may serve to obviate some objections, which have been raised to that system, we consider it sufficiently interesting for publication in the present form.'' To meet an ''extensive demand,'' Dallas reprinted the speech in the *Herald* on the 10th. For Wilson's entire speech, see CC:134.

Wilson's speech circulated from Maine to Georgia. By 29 December, it was reprinted in thirty-four newspapers in twenty-seven towns (see note 1 below). Hall and Sellers of the *Pennsylvania Gazette* published it in a four-page broadside anthology, and Mathew Carey printed it in the October issue of the Philadelphia *American Museum*. In mid-December Augustine Davis of the *Virginia Independent Chronicle*, published the speech with other Federalist and Antifederalist writings in a sixty-four page pamphlet entitled *Various Extracts on the Fœderal Government* (CC:350). The speech, along with the four ''An American Citizen'' essays was also reprinted as a pamphlet after 26 July 1788.

Wilson's speech answered some of the major criticisms made against the Constitution. The most controversial part of his address concerned his concept

of reserved powers, which he used to answer the charge that the Constitution lacked a bill of rights. Wilson declared that "in delegating fœderal powers . . . the congressional authority is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of union. Hence it is evident, that . . . every thing which is not given, is reserved." As an example, he declared that Congress could not violate the freedom of the press because it had not been given any power over the press.

Wilson's assurance that a bill of rights was unnecessary was rejected by Antifederalists because the Constitution, unlike the Articles of Confederation, did not explicitly enunciate his concept of reserved powers. They also dismissed his answers to their other charges, and in the next few months newspapers were inundated with replies to his speech.

In addition to criticizing his ideas, Antifederalists also disparaged Wilson personally. "Centinel" declared that Wilson had the "transcendent merit" of "Revelation" (CC:190). "Cincinnatus" accused Wilson of supporting the Constitution because he wanted to be either attorney general or chief justice of the United States (CC:324). "An Officer of the Late Continental Army" attacked Wilson for his lack of patriotism during the Revolution and for being "strongly tainted with the spirit *of high aristocracy*" (BoR, II, 91–94).

In general, Federalists did not come to Wilson's defense, but they did incorporate his arguments into their own writings, often without acknowledging their source. However, several essayists praised both Wilson and his constitutional principles. Washington was particularly pleased to see the text of Wilson's speech published because he believed that it answered George Mason's objections to the Constitution (CC:138, p. 347).

. . . It will be proper however, before I enter into the refutation of the charges that are alleged, to mark the leading descrimination between the state constitutions, and the constitution of the United States. When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question, respecting the jurisdiction of the house of assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating fœderal powers, another criterion was necessarily introduced, and the congressional authority is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of union. Hence it is evident, that in the former case every thing which is not reserved is given, but in the latter the reverse of the proposition prevails, and every thing which is not given, is reserved. This distinction being recognized, will furnish an answer to those who think the omission of a bill of rights, a defect in the proposed constitution: for it would have been superfluous and absurd to have stipulated with a fœderal body of our own creation, that we should enjoy those privileges, of which we are not divested either by the intention or the act, that has brought that body into existence.

For instance, the liberty of the press, which has been a copious source of declamation and opposition, what controul can proceed from the fœderal government to shackle or destroy that sacred palladium of national freedom? If indeed, a power similar to that which has been granted for the regulation of commerce, had been granted to regulate literary publications, it would have been as necessary to stipulate that the liberty of the press should be preserved inviolate, as that the impost should be general in its operation. With respect likewise to the particular district of ten miles, which is to be made the seat of fœderal government, it will undoubtedly be proper to observe this salutary precaution, as there the legislative power will be exclusively lodged in the president, senate, and house of representatives of the United States. But this could not be an object with the convention, for it must naturally depend upon a future compact, to which the citizens immediately interested will, and ought to be parties; and there is no reason to suspect that so popular a privilege will in that case be neglected. In truth then, the proposed system possesses no influence whatever upon the press, and it would have been merely nugatory to have introduced a formal declaration upon the subject—nay, that very declaration might have been construed to imply that some degree of power was given, since we undertook to define its extent.

Another objection that has been fabricated against the new constitution, is expressed in this disingenuous form—"the trial by jury is abolished in civil cases." I must be excused, my fellow citizens, if upon this point, I take advantage of my professional experience to detect the futility of the assertion. Let it be remembered then, that the business of the Fœderal Convention was not local, but general; not limited to the views and establishments of a single state, but co-extensive with the continent, and comprehending the views and establishments of thirteen independent sovereignties. When therefore, this subject was in discussion, we were involved in difficulties which pressed on all sides, and no precedent could be discovered to direct our course. The cases open to a trial by jury differed in the different states, it was therefore impracticable on that ground to have made a general rule. The want of uniformity would have rendered any reference to the practice of the states idle and useless; and it could not, with any propriety, be said that "the trial by jury shall be as heretofore," since there has never existed any fœderal system of jurisprudence to which the declaration could relate. Besides, it is not in all cases that the trial by jury is adopted in civil questions, for causes depending in courts of admiralty, such as relate to maritime captures, and such as are agitated in courts of equity, do not require the intervention of that tribunal. How then, was the

line of discrimination to be drawn? The convention found the task too difficult for them, and they left the business as it stands, in the fullest confidence that no danger could possibly ensue, since the proceedings of the supreme court, are to be regulated by the congress, which is a faithful representation of the people; and the oppression of government is effectually barred, by declaring that in all criminal cases the trial by jury shall be preserved. . . .

1. Newspaper reprints by 29 December (34): Vt. (1), N.H. (1), Mass. (6), R.I. (3), Conn. (4), N.Y. (3), N.J. (1), Pa. (9), Md. (2), Va. (2), S.C. (1), Ga. (1).

George Mason: Objections to the Constitution, 7 October 1787

In the Constitutional Convention, George Mason of Virginia advocated a strong central government, but insisted that the rights and liberties of the people be protected. When the Committee of Style presented the second draft constitution on 12 September, Mason (along with Elbridge Gerry and Edmund Randolph) demanded that a bill of rights be appended to the Constitution because of the extensive powers that had been given to the central government (BoR, I, 125). The Convention refused on 15 September (BoR, I, 125–26), and two days later the three men refused to sign the Constitution.

Before the Convention adjourned, Mason wrote his objections to the Constitution on the verso of his printed copy of the Committee of Style report. He had "intended to offer" these objections "by Way of Protest; but was discouraged from doing so, by the precipitate, & intemperate, not to say indecent Manner, in which the Business was conducted, during the last Week of the Convention, after the Patrons of this new plan found they had a decided Majority in their Favour . . ." (Mason to Thomas Jefferson, 26 May 1788, RCS:Va., 882. Mason's annotated copy of the Committee of Style report is in the Chapin Library, Williams College, Williamstown, Mass.).

Manuscript copies of Mason's objections are known to have circulated in Pennsylvania, New York, and Virginia. According to George Washington, Mason "rendered himself obnoxious in Philadelphia by the pains he took to dissiminate his objections amongst some [of] the leaders of the seceding members" of the Pennsylvania General Assembly. Washington believed that Mason's objections were "detailed in the address of the seceding members" (to James Madison, 10 October, CC:146. For the address, see BoR, II, 16–17. For Mason's alleged meeting with Robert Whitehill of Cumberland County, one of the leaders of the seceding assemblymen, see RCS:Pa., 156. A copy of Mason's objections in Whitehill's handwriting, the text of which is similar to that on Mason's Committee of Style report, is in the Whitehill Papers, Hamilton Library, Cumberland County Historical Society.).

On 18 September Mason, then in Philadelphia, wrote to Richard Henry Lee in New York City, probably enclosing a copy of his objections. (See Lee to Mason, 1 October, BoR, II, 15. For Lee's objections to the Constitution, see BoR, II, 5–12n.) Mason also allowed Elbridge Gerry to copy his objections before Gerry left for New York City around 18 September. (Gerry's transcript, written on his copy of the Committee of Style report, is in the Gerry Papers,

Massachusetts Historical Society.) Perhaps it was Gerry's copy of the objections that New York Antifederalist John Lamb read at Governor George Clinton's house in mid-October, since Gerry was in New York until late October (CC:155, 227).

By the end of September, Mason had returned to Virginia, where he revised and enlarged his objections. Copies of the revised objections were sent to George Washington on 7 October and to Elbridge Gerry on 20 October. (See CC:179 for the letter to Gerry.) On 10 October Washington forwarded a copy of the objections to James Madison in New York City, and Madison replied on 18 October with an extended critique (CC:146, 176. For a copy with an attribution to Mason in Madison's hand, see Mason Papers, DLC).

To offset Mason's expected influence in Virginia, George Washington on 17 October forwarded a copy of James Wilson's 6 October speech (BoR, II, 25–28) to David Stuart, who, like Mason, represented Fairfax County in the Virginia House of Delegates sitting in Richmond. Washington asked that the speech be reprinted because he hoped that "it will place the most of Colo. Mason's objections in their true point of light" (CC:165). Wilson's speech appeared in the Richmond *Virginia Independent Chronicle* on 24 October.

Washington's fears about Mason's influence in Virginia were justified. News of the objections had already reached Richmond before Mason took his seat in the House of Delegates on 24 October. On 21 October John Peirce, a member of the House of Delegates, stated that "Mr. Mayson has taken the utmost pains to disseminate the reasons of his dissent, in which he has condemned every part of the constitution, and undertaken to proving the destruction of the liberty of the people in consequence of it" (to Henry Knox, RCS:Va., 88–89). Even though his objections were circulating, Mason did not present them to the House during the debates on calling a state convention. He stated that he would communicate them to his "countrymen" "at a proper season" (Petersburg *Virginia Gazette*, 1 November, RCS:Va., 113–114).

In November Mason's objections were reported to be circulating in and around Alexandria, not far from his home. On 20 November James Hughes, writing from Alexandria, stated that "I have seen Col. Masons objections: only a few of them are even plausible" (to Horatio Gates, RCS:Va., 169). This continued circulation of the objections worried "Brutus," who had seen a copy of the revised objections. "Brutus" (Washington's secretary Tobias Lear) believed that the objections should be submitted to "the test of a public investigation," where it could be shown "how effectually his [Mason's] sentiments may be controverted, or how far his arguments may be invalidated." Consequently, "Brutus" turned over a copy of the objections to the Alexandria *Virginia Journal*, which published them on 22 November.

The next day Mason's unrevised objections were printed in the Winchester *Virginia Gazette*, the only newspaper to print this version. The text published in the *Gazette* is similar to that found on the verso of Mason's printed copy of the Committee of Style report, except for some minor changes in organization.

At about the same time, Mason's objections were also published in Massachusetts. On 21 November the *Massachusetts Centinel* printed an incomplete version of Mason's revised objections, allegedly obtained from a New York City correspondent. On 19 December the *Centinel* published the paragraph which had been omitted on 21 November.

In the month and a half after 21 November, Mason's objections were reprinted in twenty-five newspapers from Maine to South Carolina. With this expanded circulation, the objections received the full attention of Federalists and Antifederalists who printed dozens of responses to and commentaries on them. For a more complete account of the publication of and response to Mason's objections, see CC:276.

George Mason to George Washington
Gunston Hall, Fairfax County, Va., 7 October 1787 (excerpt)[1]

. . . I take the Liberty to enclose You my Objections to the new Constitution of Government; which a little Moderation & Temper, in the latter End of the Convention, might have removed. I am however most decidedly of Opinion, that it ought to be submitted to a Convention chosen by the People, for that special Purpose; and shou'd any Attempt be made to prevent the calling such a Convention here, such a Measure shall have every Opposition in my Power to give it—You will readily observe, that my Objections are not numerous (the greater Part of the inclosed paper containing Reasonings upon the probable Effects of the exceptionable Parts) tho' in my Mind, some of them are capital ones.—

George Mason: Objections to the Constitution, 7 October 1787 (excerpts)[2]

There is no Declaration of Rights; and the Laws of the general Government being paramount to the Laws & Constitutions of the several States, the Declarations of Rights in the separate States are no Security. Nor are the People secured even in the Enjoyment of the Benefits of the common-Law; ⟨which stands here upon no other Foundation than it's having been adopted by the respective Acts forming the Constitutions of the several States.⟩[3] . . .

Under their own Construction of the general Clause at the End of the enumerated Powers,[4] the Congress may grant Monopolies in Trade & Commerce, constitute new Crimes, inflict unusual & severe Punishments, and extend their Power as far as they shall think proper; so that the State Legislatures have no Security for the Powers now presumed to remain to them; or the People for their Rights.—

There is no Declaration of any kind for preserving the Liberty of the Press, the Tryal by jury in civil Causes; nor against the Danger of standing Armys in time of Peace. . . .

Both the general Legislature & the State Legislatures are expressly prohibited making ex post facto Laws; tho' there never was or can be a Legislature but must & will make such Laws, when Necessity & the public Safety require them; which will hereafter be a Breach of all the Constitutions in the Union, and afford Precedents for other Innovations.—

This Government will commence in a moderate Aristocracy; it is at present impossible to foresee whether it will, in it's Operation, produce a Monarchy, or a corrupt oppressive Aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other. . . .

1. RC, Washington Papers, DLC. Printed: Abbot, *Washington, Confederation Series*, V, 355–58n.

2. MS, Washington Papers, DLC. The original or earlier draft was headed: "Objections to this Constitution of Government." For all of Mason's objections, see CC:138.

3. The text in angle brackets is not in Mason's original draft.

4. Article I, section 8, clause 18.

Foederal Constitution
Pennsylvania Gazette, 10 October 1787 (excerpt)[1]

. . . The objections to the fœderal government are weak, false and absurd. The neglect of the Convention to mention the *Liberty of the Press* arose from a respect to the state constitutions, in each of which this palladium of liberty is secured, and which is guaranteed to them as an essential part of their republican forms of government. But supposing this had not been done, the *Liberty of the Press* would have been an inherent and political right, as long as nothing was said *against* it. The Convention have said nothing to secure the privilege of eating and drinking, and yet no man supposes that right of nature to be endangered by their silence about it. . . .

1. For the entire piece, see CC:150. It was reprinted in full in the Philadelphia *Independent Gazetteer*, 15 October; *Philadelphische Correspondenz*, 16 October; New Jersey *Brunswick Gazette*, 16 October; and the October issue of the Philadelphia *American Museum*. This paragraph was reprinted in seven other newspapers by 23 November: N.H. (1), Mass. (3), Conn. (1), N.Y. (1), S.C. (1).

Richard Henry Lee to George Washington
New York, 11 October 1787 (excerpt)[1]

. . . It is Sir, in consequence of long reflection upon the nature of Man and of government, that I am led to fear the danger that will ensue to Civil Liberty, from the adoption of the new system in its present form. I am fully sensible of the propriety of change in the present plan of confederation, and altho there may be difficulties, not inconsiderable, in procuring an adoption of such amendments to the Convention System as will give security to the just rights of human nature, and better secure from injury the discordant interests of the different parts of this Union; yet I hope that these difficulties are not insurmountable. Because we are happily uninterrupted by external war, or

by such internal discords as can prevent peaceable and fair discussion, in another Convention, of those objections that are fundamentally strong against the new Constitution, which abounds with useful regulations. As there is so great a part of the business well done already, I think that such alterations as must give very general content, could not long employ another Convention when provided with the sense of the different States upon those alterations.

I am much inclined to believe that the amendments generally thought to be necessary, will be found to be of such a nature, as tho they do not oppose the exercise of a very competent federal power; are yet such as the best Theories on Government and the best practise upon those theories have found necessary. At the same time that they are such as the opinions of our people have for ages been fixed on. It would be unnecessary for me here to enumerate particulars as I expect the honor of waiting on you at Mount Vernon in my way home early in November.[2] . . .

1. RC, Washington Papers, DLC. For the entire letter, see RCS:Va., 56–57.

2. Lee did not enclose a copy of his proposed amendments in this letter as he had in letters to several prominent Antifederalists, nor is there any evidence that he gave Washington a copy of his amendments when he visited Mount Vernon on 11–12 November.

A Citizen of Pennsylvania
Pennsylvania Packet, 12 October 1787 (excerpts)[1]

To the PEOPLE *of* AMERICA.

The present situation of the United States has attracted the notice of every country in Europe. By the discussions which led to the revolution, we have proved to the world, that we were intimately acquainted with the natural rights and political relations of mankind. By those discussions, and the subsequent conduct of America, her enemies must be well convinced, that she is sincerely attached to liberty, and that her citizens will never submit to a deprivation of that inestimable blessing. To ensure the continuance of that real freedom in the spirit of which our State Constitutions were universally formed; to ensure it from enemies within, then existing and numerous; to ensure it from enemies without, then and ever to be watched and repelled, the first confederation was formed. It was an honest and solemn covenant among our infant States, and virtue and common danger supplied its defects. When the immediate perils of those awful times were removed by the valor and persevering fortitude of America, aided by the active friendship of France, and the follies of Great Britain, those defects were too easily seen and felt.—They have been acknowledged at various times

by all the legislatures of the Union; and often, very often indeed, represented by Congress. The Commonwealth of Virginia took the first step to obtain this object of universal desire, by applying to her sister States to meet her in the Commercial Convention in the last year. Some of the States immediately adopted the measure, Congress *afterwards* added their sanction, and a few more of the States concurred. A meeting of the deputies, though not a general one, took place at the appointed time. The members of that body, influenced, I am persuaded, by the purest considerations, added their voice to the general wish for another Convention, whose object should be the revision and amendment of the fœderal government. It is worthy of remark, that these proceedings of the States were not conducted through those channels the confederation points out, but they were not inconsistent with it, they were certainly not improper: for it is not material, in what manner the United States in Congress become possessed of the matter and form of changes *really desired by the* PEOPLE of the Union. It is only necessary when that body shall determine on alterations, that they proceed constitutionally to obtain the adoption of them. It may be observed further, that the address of the Annapolis Convention signed by the Hon. JOHN DICKINSON, Esq. was published in Sept. 1786 in the News-papers, of all the middle States, and particularly those of Pennsylvania, during the sitting of the Hon. the General Assembly of the Commonwealth. The People, therefore, throughout the Union, *and most certainly in Pennsylvania*, must have known that the important duty of amending our Fœderal Constitution (so far as the legislatures could interfere in it) must come before the members they were then about to chuse. I have drawn the attention of my fellow-citizens to this fact, and request they will observe it, because a contrary idea has been given by some members of our legislature. . . .

⟨Much observation has been made in regard to the omission of a bill of rights in the new frame of government. Such remarks, I humbly conceive, arise from a great inadvertency in taking up the subject. When the people of these states dissolved their connection with the crown of Great Britain, by the declaration of independence, they found themselves, as to government, *in a state of nature*: yet they were very sensible of the blessings of civil society. On *a recommendation* of Congress, who were then possessed of no authority, the inhabitants of each colony respectively, formed a compact for themselves, which compacts are our state constitutions.[2] These were original agreements among *individuals*, before actually in a state of nature. In these constitutions a bill of rights (that is a declaration of the unaliened rights of each individual) was proper, and indispensibly necessary. When the several

states were thus formed into thirteen separate and independent sovereignties, Congress, who managed their general affairs, and their respective legislatures thought it proper (and it was surely absolutely necessary) that a confederation should be prepared and executed. The measure was accordingly adopted; and here let us observe this was *a compact among thirteen independent states* of the nature of a perpetual treaty.[3] It was acceded to by the several states as sovereign. *No individuals* were parties to it. *No rights of individuals* could therefore be declared in it. The rights of *contracting parties* (the thirteen *states*) were declared. Those rights remain inviolate. No bill of the rights of *the freemen* of the union was thought of, nor could be introduced. No complaint was made of the want [of] it, for it was a matter foreign from the nature of the compact. In articles of agreement *among a number of people forming a civil society*, a bill of the rights of individuals comes in of course, and is *indispensably* necessary. In articles of agreement *among a number of independent states*, entering into an union, a bill of the rights of individuals is *excluded* of course. As in the old confederation or compact among the thirteen independent sovereignties of America, no bill of rights of individuals could be or was introduced: so in the proposed compact among the same thirteen independent sovereignties, no bill of the rights of individuals has been or could be introduced. This would be to annihilate our states constitutions, by rendering them unnecessary. The liberty of the press, from an honest republican jealousy, which I highly applaud, has also been a subject of observation; but the right of writing for publication, and of printing, publishing and selling, what may be written are *personal* rights, *are part of the rights of individuals.* Thus we see when attempts have been made to restrain them in any country, *the individuals concerned* have only been, or indeed could be the objects of attention. They are the rights of *the people in the states*, and can only be exercised by them. They are not the rights of the thirteen independent sovereignties, therefore could not enter into either the old or new compact among them. Every constitution in the union guards the liberty of the press. It has also become a part of the common law of the land. But who is to destroy it? Not the people at large, for it is their most invaluable privilege—the palladium of their happiness—Not the state legislatures, for their respective constitutions forbid them to infringe it. Not the foederal government, *for they have never had it transferred into their hands.* It remains amongst those rights *not conveyed to them.* But who are the fœderal government, that they should take away the freedom of the press, was it not out of their reach? *Are they not the temporary responsible servants of the people?* How then, my countrymen, is this favorite inestimable privilege in danger? It cannot

be affected. It is understood by all men that it is never to be touched. It is guarded by insurmountable barriers, as you have already seen; and woe betide—the heaviest woe will betide the sacrilegious hand that shall attempt to remove them.⟩

1. For the entire piece, see RCS:Pa. Supplement, 299–305. The text within angle brackets was reprinted in the *Maryland Journal*, 19 October, and the Charleston, S.C., *Columbian Herald*, 15 November.

2. A reference to Congress' resolution of 10 May 1776 recommending that each colony adopt a constitution amenable to the people (BoR, I, 57).

3. The Articles of Confederation.

An Old Whig I
Philadelphia Independent Gazetteer, 12 October 1787[1]

Eight essays signed "An Old Whig" were published in the Philadelphia *Independent Gazetteer* between 12 October 1787 and 6 February 1788. Only the last two essays were numbered. Numbers IV and V were published as broadsides by Eleazer Oswald of the *Independent Gazetteer*. "An Old Whig" was not widely reprinted. Only number IV was reprinted in as many as four newspapers; no newspaper reprinted all eight essays, although the *New York Journal* published the first seven.

William Shippen, Jr. believed that both "An Old Whig" and "Centinel" were written "by a club"—George Bryan, John Smilie, James Hutchinson, and others (to Thomas Lee Shippen, 22 November, RCS:Pa., 288), but an unidentified Pennsylvanian claimed that Bryan alone wrote both series (*Pennsylvania Gazette*, 31 October, RCS: Pa. Supplement, 485–86).

Pennsylvania Federalists did not publish a single substantive criticism of "An Old Whig." For examples of replies, see a satire signed "An Old Whig," *Independent Gazetteer*, 15 October, and "Gomez," *Pennsylvania Gazette*, 26 December (RCS:Pa. Supplement, 310 and 752).

Pennsylvania Antifederalists praised the essays. Francis Murray stated that "An Old Whig" II–III and other Antifederalist essays "greatly changed" his sentiments about the Constitution (to John Nicholson, 1 November, RCS:Pa., 207). "Philadelphiensis" I and "Aristocrotis" (William Petrikin) admired "An Old Whig's" courage for speaking out as a freeman (*Independent Gazetteer*, 7 November, CC:237–A, and c. April 1788, RCS:Pa. Supplement, 1236).

Outside Pennsylvania, criticism of "An Old Whig" was confined almost entirely to the *Massachusetts Centinel*. On 27 October Benjamin Russell, the *Centinel's* publisher, reprinted "An Old Whig" I in an effort to refute criticism that he was boycotting Antifederalist material. (See CC:131.) To counteract this reprinting, Russell published three Federalist answers to "An Old Whig" in his next issue on 31 October—"Poplicola," "Examiner," and a short unsigned statement (RCS:Mass., 179–84). Another brief unsigned reply appeared in the *Centinel* on 12 December (RCS:Mass., 418–19).

Mr. PRINTER, I am one of those who have long wished for a federal government, which should have power to protect our trade and provide

for the general security of the United States. Accordingly, when the constitution proposed by the late convention made its appearance, I was disposed to embrace it almost without examination; I was determined not to be offended with trifles or to scan it too critically. "We want something: let us try this; experience is the best teacher: if it does not answer our purpose we can alter it: at all events it will serve for a beginning." Such were my reasonings;—but, upon further reflection, I may say that I am shaken with very considerable doubts and scruples, I want a federal constitution; and yet I am afraid to concur in giving my consent to the establishment of that which is proposed. At the same time I really wish to have my doubts removed, if they are not well founded. I shall therefore take the liberty of laying some of them before the public, through the channel of your paper.

In the first place, it appears to me that I was mistaken in supposing that we could so very easily make trial of this constitution and again change it at our pleasure. The conventions of the several states cannot propose any alterations—they are only to give their *assent* and *ratification*. And after the constitution is once ratified, it must remain fixed until two thirds of both the houses of Congress shall deem it necessary to propose amendments; or the legislatures of two thirds of the several states shall make application to Congress for the calling a convention for proposing amendments, which amendments shall not be valid till they are ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as one or the other mode of ratification may be proposed by Congress.—This appears to me to be only a cunning way of saying that no alteration shall ever be made; so that whether it is a good constitution or a bad constitution, it will remain forever unamended. Lycurgus, when he promulgated his laws to the Spartans, made them swear that they would make no alterations in them until he should return from a journey which he was then about to undertake:—He chose never to return, and therefore no alterations could be made in his laws. The people were made to believe that they could make trial of his laws for a few months or years, during his absence, and as soon as he returned they could continue to observe them or reject at pleasure. Thus this celebrated Republic was in reality established by a trick. In like manner the proposed constitution holds out a prospect of being subject to be changed if it be found necessary or convenient to change it; but the conditions upon which an alteration can take place, are such as in all probability will never exist. The consequence will be that, when the constitution is once established, it never can be altered or amended without some violent convulsion or civil war.

The conditions, I say, upon which any alterations can take place, appear to me to be such as never will exist—two thirds of both houses of Congress or the legislatures of two thirds of the states, must agree in desiring a convention to be called. This will probably never happen; but if it should happen, then the convention may agree to the amendments or not as they think right; and after all, three fourths of the states must ratify the amendments.—Before all this labyrinth can be traced to a conclusion, ages will revolve, and perhaps the great principles upon which our late glorious revolution was founded, will be totally forgotten. If the principles of liberty are not firmly fixed and established in the present constitution, in vain may we hope for retrieving them hereafter. People once possessed of power are always loth to part with it; and we shall never find two thirds of a Congress voting or proposing any thing which shall derogate from their own authority and importance, or agreeing to give back to the people any part of those privileges which they have once parted with—so far from it; that the greater occasion there may be for a reformation, the less likelihood will there be of accomplishing it. The greater the abuse of power, the more obstinately is it always persisted in. As to any expectation of two thirds of the legislatures concurring in such a request, it is if possible, still more remote. The legislatures of the states will be but forms and shadows, and it will be the height of arrogance and presumption in them, to turn their thoughts to such high subjects. After this constitution is once established, it is too evident that we shall be obliged to fill up the offices of assemblymen and councillors, as we do those of constables, by appointing men to serve whether they will or not, and fining them if they refuse. The members thus appointed, as soon as they can hurry through a law or two for repairing highways or impounding cattle, will conclude the business of their sessions as suddenly as possible; that they may return to their own business.—Their heads will not be perplexed with the great affairs of state—We need not expect two thirds of them ever to interfere in so momentous a question as that of calling a Continental convention.—The different legislatures will have no communication with one another from the time of the new constitution being ratified, to the end of the world. Congress will be the great focus of power as well as the great and only medium of communication from one state to another. The great, and the wise, and the mighty will be in possession of places and offices; they will oppose all changes in favor of liberty; they will steadily pursue the acquisition of more and more power to themselves and their adherents. The cause of liberty, if it be now forgotten, will be forgotten forever.—Even the press which has so long been employed in the cause of liberty, and to which perhaps

the greatest part of the liberty which exists in the world is owing at this moment; the press may possibly be restrained of its freedom, and our children may possibly not be suffered to enjoy this most invaluable blessing of a free communication of each others sentiments on political subjects—Such at least appear to be some men's fears, and I cannot find in the proposed constitution any thing expressly calculated to obviate these fears; so that they may or may not be realized according to the principles and dispositions of the men who may happen to govern us hereafter. One thing however is calculated to alarm our fears on this head;—I mean the fashionable language which now prevails so much and is so frequent in the mouths of some who formerly held very different opinions;—THAT COMMON PEOPLE HAVE NO BUSINESS TO TROUBLE THEMSELVES ABOUT GOVERNMENT. If this principle is just the consequence is plain that the common people need no information on the subject of politics. Newspapers, pamphlets and essays are calculated only to mislead and inflame them by holding forth to them doctrines which they have no business or right to meddle with, which they ought to leave to their superiors. Should the freedom of the press be restrained on the subject of politics, there is no doubt it will soon after be restrained on all other subjects, religious as well as civil. And if the freedom of the press shall be restrained, it will be another reason to despair of any amendments being made in favor of liberty, after the proposed constitution shall be once established. Add to this, that under the proposed constitution, it will be in the power of the Congress to raise and maintain a standing army for their support, and when they are supported by an army, it will depend on themselves to say whether any amendments shall be made in favor of liberty.

If these reflections are just it becomes us to pause, and reflect previously before we establish a system of government which cannot be amended; which will entail happiness or misery on ourselves and our children. We ought I say to reflect carefully, we ought not by any means to be in haste; but rather to suffer a little temporary inconvenience, than by any precipitation to establish a constitution without knowing whether it is right or wrong, and which if wrong, no length of time will ever mend. Scarce any people ever deliberately gave up their liberties; but many instances occur in history of their losing them forever by a rash and sudden act, to avoid a pressing inconvenience or gratify some violent passion of revenge or fear. It was a celebrated observation of one of our Assemblies before the revolution, during their struggles with the proprietaries, that "those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety."[2]

For the present I shall conclude with recommending to my countrymen not to be in haste, to consider carefully what we are doing. It is our own concern; it is our own business; let us give ourselves a little time at least to read the proposed constitution and know what it contains; for I fear that many, even of those who talk most about it have not even read it, and many others, who are as much concerned as any of us, have had no opportunity to read it. And it is certainly a suspicious circumstance that some people who are presumed to know most about the new constitution seem bent upon forcing it on their countrymen without giving them time to know what they are doing.

Hereafter I may trouble you further on some other parts of this important subject; but I fear this letter is already too long.

1. Reprinted: *Massachusetts Centinel*, 27 October, and *New York Journal*, 27 November.

2. This sentence was part of a response from the Pennsylvania Assembly to the Governor Robert Hunter Morris on 11 November 1755, written by a committee that included Benjamin Franklin.

Sly-Boots

Pennsylvania Herald, 13 October 1787

To the EDITOR of the PENNSYLVANIA HERALD.

SIR, I observe that the writers and speakers in favour of the new fœderal constitution uniformly ascribe all opposition to sinister motives; and an oratorical gentleman went so far at a late meeting, as to assert, that there were only two denominations of men inimical to the plan—viz.—pensioned place men, and foreign agents. I cannot conceive to whom the latter description applies, except it is to those agents that have been sent hither for the collection of debts, and it is surely their interest to promote a strong and honest government to inculcate or enforce the faith of private engagements. But the other part of the proposition, respecting pensioned placemen, is easily understood, and must in some degree be admitted. I wish however to reverse the question—are not the warmest advocates in favour of the new constitution instigated by the hopes of attaining some place of profit or distinction?—This will put the matter upon a fair footing; for and if we equally disregard the interested opinions of those who are to gain as well as those who are to lose by the change, the merits of the work will undergo a candid and satisfactory investigation. A very worthy member of the late convention has been heard to say, that if ever another fœderal assembly was called for improving our government, he hoped the

persons that composed it would be sworn never to accept or undertake any of the offices of the union, whether honorary or lucrative. This was not merely a hint for the future, but an intimation of the past. The delegates who composed the late convention are deservedly the favourites of their constituents, and will certainly be called upon to fill the departments of a government which they have been employed to create. *Verbum sapientia.*

Philadelphia Independent Gazetteer, 13 October 1787[1]

A correspondent observes that, the opposers of the federal constitution are secretly affecting delay in order to prevent its adoption—In the mean time, they are moving heaven and earth to prejudice the public mind against it—They do not reason, but abuse—General *Washington*, they (in effect) say, is a dupe, and Doctor *Franklin*, an old fool—vide the *Centinel*.[2]—They will doubtless in their next publications, assert that *Daniel Shays* is the best patriot in the United States, and that *John Franklin* should be king of Pennsylvania.

He further observes, that as delay is the means by which they are contriving to carry their point—They are about sending deputies to find out *Lycurgus*, the antient law-giver of the Spartans, whose death has never been clearly ascertained—Their errand is to invite him among us, that he may form another federal constitution—That until *Lycurgus shall come*, it will not be proper to adopt the constitution proposed by the convention, as he having lived two thousand years, will be able to frame a better one[3]—They have agreed that *when he shall come*, they will renounce their offices as too profitable for his frugal plan of government, or will at least take their fees and salaries in iron, instead of gold and silver, pound for pound—But *until Lycurgus come*, they will hold their present offices and take their fees and salaries in gold and silver, as will be very convenient.

He further asks, whether any man of common sense, believes we shall have another federal convention if the present plan is not adopted? Whether the complying states can believe Pennsylvania to be serious in her federal professions, if she rejects a plan recommended by men so experienced, able and upright, as the late convention, especially after so full a consideration of the subject.

He is curious to know what men will be named who are likely to form a better plan—and whether the nineteen seceding members, the *Centinel* and the *Old Whig*, are to be of the number[4]—lastly, if they are, whether they are prepared to give security to their constituents that

they will not desert their duty and make another secession when the salvation of their country depends on their keeping their posts.

1. Reprinted by 1 December (6): Mass. (2), N.Y. (2), S.C. (1), Ga. (1).

2. See "Centinel" I, 5 October, CC:133, p. 330.

3. Perhaps an answer to the manner in which "An Old Whig" I (BoR, II, 36) referred to Lycurgus.

4. For the address, "Centinel" I, and "An Old Whig" I, see BoR, II, 16–17, 21–25, 35–39, respectively.

George Washington to Henry Knox
Mount Vernon, Fairfax County, Va., 15 October 1787 (excerpt)[1]

. . . The Constitution is now before the judgment seat.—It has, as was expected, its advisaries, and its supporters, which will preponderate is yet to be decided.—The former, it is probable, will be most active, because the Major part of them it is to be feared will be governed by sinester and self important considerations on which no arguments will work conviction—the opposition from another class of them (if they are men of reflection, information and candour) may perhaps subside on the solution of the following plain, but important questions. 1. Is the Constitution which is submitted by the Convention preferable to the government (if it can be called one) under which we now live?—2. Is it probable that more confidence will, at this time, be placed in another Convention (should the experiment be tried) than was given to the last? and is it likely that there would be a better agreement in it?[2] [3.] Is there not a Constitutional door open for alterations and amendments; & is it not probable that real defects will be as readily discovered after, as before, trial? and will not posterity be as ready to apply the remedy as ourselves, if there is occasion for it, when the mode is provided?—To think otherwise will, in my judgment, be ascribing more of the amor patria—more wisdom—and more foresight to ourselves, than I conceive we are entitled to. . . .

1. RC (photostat), Washington Papers, DLC. For Washington's entire letter, see RCS: Va., 56–57.

2. At this point in his letterbook, Washington wrote "what would be the consequences if these should not happen, or even from the delay which must inevitably follow such an experiment?" (Washington Papers, DLC).

A Democratic Federalist
Pennsylvania Herald, 17 October 1787 (excerpt)

"A Democratic Federalist" was the first major reply to James Wilson's speech of 6 October (BoR, II, 25–28). It was reprinted in the *New York Morning Post*,

22 October; *Pennsylvania Packet*, 23 October; and Baltimore *Maryland Gazette*, 26 October. The *Maryland Gazette* prefaced its publication with a statement by "A Customer" who requested that, since it had reprinted Wilson's speech, the *Gazette* might prove its impartiality and publish an answer to it. "A Customer" continued: "The subject now before the people of America, is of the most important nature, *the happiness of millions* depends on their present determination.—Let them, therefore, enjoy every light a free press can afford, that they may judge for themselves, like rational creatures and freemen—Truth will shine the brighter when brought to the test."

"Hickory" stated that "A Democratic Federalist" was filled with "many good, solid arguments" (*Pennsylvania Herald*, 24 October, RCS:Pa. Supplement, 448), while "A Federal Republican" asserted that it was "more than equal" to Wilson (*A Review of the Constitution*, 28 November, CC:303, p. 258; see BoR, II, 138–40, for an excerpt). "A Friend to Order," however, wrote a point-by-point rebuttal and declared that "A Democratic Federalist's" "merit, if it can be called merit, lays in ingenious misrepresentation of the *powers of the proposed Constitution*" (Baltimore *Maryland Gazette*, 30 October, RCS:Md., 26–28). For the full text of "A Democratic Federalist," see CC:167.

The arguments of the Honorable Mr. Wilson, expressed in the speech he made at the state-house on the Saturday preceding the general election (as stated in the *Pennsylvania Herald*), although extremely *ingenious* and the best that could be adduced in support of so bad a cause, are yet extremely *futile*, and will not stand the test of investigation.

In the first place, Mr. Wilson pretends to point out a leading discrimination between the State Constitutions, and the Constitution of the United States.—In the former, he says, every power which is not *reserved* is *given*, and in the latter, every power which is not *given* is *reserved*: And this may furnish an answer, he adds, to those who object, that a bill of rights has not been introduced in the proposed Federal Constitution. If this doctrine is true, and since it is the only security that we are to have for our natural rights, it ought at least to have been clearly expressed in the plan of government. The 2d. section of the present articles of confederation says: *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.—This declaration (for what purpose I know not) is entirely omitted in the proposed Constitution. And yet there is a material difference between this Constitution and the present confederation, for Congress in the latter are merely an executive body; it has no power to raise money, it has no *judicial jurisdiction*. In the other, on the contrary, the federal rulers are vested with each of the three

essential powers of government—their laws are to be *paramount* to the laws of the different States, what then will there be to oppose to their encroachments? Should they ever pretend to tyrannize over the people, their *standing army*, will silence every popular effort, it will be theirs to explain the powers which have been granted to them; Mr. Wilson's distinction will be forgot, denied or explained away, and the liberty of the people will be no more.

It is said in the 2d. section of the 3d. article of the Federal Plan: "The judicial power shall extend to ALL CASES in *law* and *equity*, arising under this constitution." It is very clear that under this clause, the tribunal of the United States, may claim a right to the cognizance of all offences against the *general government*, and *libels* will not probably be excluded. Nay, those offences may be by them construed, or by law declared, *misprision of treason*, an offence which comes literally under their express jurisdiction.—Where is then the safety of our boasted liberty of the press? And in case of a *conflict of jurisdiction* between the courts of the United States, and those of the several Commonwealths, is it not easy to foresee which of the two will obtain the advantage?

Under the enormous power of the new confederation, which extends to the *individuals* as well as to the *States* of America, a thousand means may be devised to destroy effectually the liberty of the press—There is no knowing what corrupt and wicked judges may do in process of time, when they are not restrained by express laws. The case of *John Peter Zenger* of New-York, ought still to be present to our minds, to convince us how displeasing the liberty of the press is to men in high power.[1]—At any rate, I lay it down as a general rule, that wherever the powers of a government extend to the lives, the persons, and properties of the subject, all their rights ought to be clearly and expressly defined—otherwise they have but a poor security for their liberties.

The second and most important objection to the federal plan, which Mr. Wilson pretends to be made *in a disingenuous form*, is the entire *abolition of the trial by jury in civil cases*. It seems to me that Mr. Wilson's pretended answer, is much more *disingenuous* than the objection itself, which I maintain to be strictly founded in fact. He says "that the cases open to trial by jury differing in the different States, it was therefore impracticable to have made a general rule." This answer is extremely futile, because a reference might easily have been made to the *common law of England*, which obtains through every State, and cases in the maritime and civil law courts would of course have been excepted. I

must also directly contradict Mr. Wilson when he asserts that there is no trial by jury in the courts of chancery—It cannot be unknown to a man of his high professional learning, that whenever a difference arises about a matter of fact in the courts of equity in America or England, the fact is sent down to the courts of common law to be tried by a jury, and it is what the lawyers call a *feigned issue*. This method will be impracticable under the proposed form of judicial jurisdiction for the United States.

But setting aside the equivocal answers of Mr. Wilson, I have it in my power to prove that under the proposed Federal Constitution, *the trial of facts in civil cases by a jury of the Vicinage* is entirely and effectually abolished, and will be absolutely impracticable. I wish the learned gentleman had explained to us what is meant by the *appellate* jurisdiction as to law and *fact* which is vested in the superior court of the United States? As he has not thought proper to do it, I shall endeavour to explain it to my fellow citizens, regretting at the same time that it has not been done by a man whose abilities are so much superior to mine. The word *appeal*, if I understand it right, in its proper legal signification includes the *fact* as well as the *law*, and precludes every idea of a trial by jury—It is a word of *foreign growth* and is only known in England and America in those courts which are governed by the civil or ecclesiastical law of the *Romans*. Those courts have always been considered in England as a grievance, and have all been established by the usurpations of the *ecclesiastical* over the *civil* power. It is well known that the courts of chancery in England were formerly entirely in the hands of *ecclesiastics*, who took advantage of the strict forms of the common law, to introduce a foreign mode of jurisprudence under the specious name of *Equity*. Pennsylvania, the freest of the American States has wisely rejected this establishment, and knows not even the name of a court of chancery—And in fact, there can not be any thing more absurd than a distinction between LAW and EQUITY. It might perhaps have suited those barbarous times when the law of England, like almost every other science, was perplexed with quibbles and *Aristotelian* distinctions, but it would be shameful to keep it up in these more enlightened days. At any rate, it seems to me that there is much more *equity* in a trial by jury, than in an appellate jurisdiction from the fact.

An *appeal* therefore is a thing unknown to the common law. Instead of an appeal from facts, it admits of a second, or even third trial by different juries, and mistakes in points of *law*, are rectified by superior courts in the form of a *writ of error*—and to a mere common lawyer,

unskilled in the forms of the *civil law* courts, the words *appeal from law and fact*, are mere nonsense, and unintelligible absurdity.

But even supposing that the superior court of the United States had the authority to try facts by *juries of the vicinage*, it would be impossible for them to carry it into execution. It is well known that the supreme courts of the different states, at stated times in every year, go round the different counties of their respective states to try issues of fact, which is called *riding the circuits*. Now, how is it possible that the supreme continental court, which we will suppose to consist at most of five or six judges, can travel at least twice in every year, through the different counties of America, from New-Hampshire to Kentuckey, and from Kentuckey to Georgia, to try facts by juries of the vicinage. Common sense will not admit of such a supposition.[2] I am therefore right in my assertion, that *trial by jury in civil cases, is, by the proposed constitution entirely done away, and effectually abolished. . . .*

1. In November 1734 Zenger (1697–1746), the printer of the *New York Weekly Journal*, was arrested for seditious libel against the royal governor William Cosby. Bail was set very high, and Zenger remained in prison until after he was acquitted the following summer. His defense was based upon the freedom of the press and the role of the jury.

2. The Judiciary Act of 1789 created three judicial circuits (Northern, Middle, and Southern) and provided for the appointment of a district judge in every state and in Kentucky and Maine. The act also provided for six justices for the Supreme Court. Two justices of the Supreme Court were assigned a circuit and twice a year accompanied the district court judge in each state and rode the circuit for that state as a circuit court with both original and appellate jurisdiction.

Cæsar II

New York Daily Advertiser, 17 October 1787 (excerpt)[1]

. . . When I offered a few remarks on Cato's introduction, I was strongly impressed with the idea, that even the most substantial criticisms, promulgated by the most influential and *avowed Citizens*, could have no good tendency at *this time*. I viewed the public mind as wound up to a great pitch of dissatisfaction, by the inadequacy of the powers of the present Congress, to the general good and conservation of the Union—I believed then, as I do now, that the people were determined and prepared for *a change:* I conceived, therefore, that the wish of every good man would be, that *this change might be peaceably effected*. With this view, I opposed myself to Cato. I asserted, in my last, *that the door of recommendation was shut, and cannot be opened by the same men, that the Convention was dissolved*. If I am wrong, it will be of great importance

to Cato's future remarks, that he make it appear. If he will declare, from sufficient authority, that the Members of the late Convention have only adjourned, to give time to hear the sentiments of every political disputant, that, after the numerous presses of America have groaned with the heavy productions of speculative politicians, they will *again meet*—weigh their respective merits, and accommodate accordingly:—I say, if Cato can do this, I make no hesitation in acknowledging the utility of his plan. In the mean time, I positively deny having any, the most distant desire of shutting the door of free discussion, on any subject, which may benefit the people; but I maintain (until Cato's better information refutes me) that the door, as far as relates to *this subject*, is already shut—not by me, but by the highest possible authority which the case admits—even by those great Patriots who were delegated by the people of the United States, to *open such a door*, as might enable them to escape from impending calamities, and political shipwreck. . . .

1. Reprinted: *Albany Gazette*, 1 November. For authorship, see BoR, II, 16. For the entire essay, see RCS:N.Y., 91–96n.

Montezuma

Philadelphia Independent Gazetteer, 17 October 1787[1]

MR. OSWALD, *That the enclosed defence may be laid open to the general scrutiny of my fellow citizens, I request a place for it in your paper.*

LYCURGUS.

We the Aristocratic party of the United States, lamenting the many inconveniencies to which the late confederation subjected the *well-born*, the *better kind* of people bringing them down to the level of the *rabble*, and holding in utter detestation, that frontispiece to every bill of rights—"that all men are born equal," beg leave (for the purpose of drawing a line between such as we think were *ordained* to govern, and such as were *made* to bear the weight of government without having any share in its administration) to submit to *our friends* in the first class for their inspection, the following defence of *our monarchical, aristocratical democracy*,

1st. As a majority of all societies consist of men who (though totally incapable of thinking or acting in governmental matters) are more readily led than driven, we have thought meet to indulge them in something like a democracy in the new constitution, which part we have designated by the popular name of the House of Representatives; but

to guard against every possible danger from this *lower house*, we have subjected every bill they bring forward, to the double negative of our *upper house* and president—nor have we allowed the *populace* the right to elect their representatives annually, as usual, lest this body should be too much under the influence and controul of their constituents, and thereby prove the "weatherboard of our grand edefice, to shew the shiftings of every fashionable gale," for we have not yet to learn that little else is wanting, to aristocratize the most democratical representative than to make him somewhat independent of his *political creators*—We have taken away that rotation of appointment which has so long perplexed us—that *grand engine* of popular influence; every man is eligible into our government, from time to time for life—this will have a two-fold good effect; first it prevents the representatives from mixing with the *lower class*, and imbibing their foolish sentiments, with which they would have come charged on re-election.

2d. They will from the perpetuality of office be under *our* eye, and in a short time will think and act like *us*, independently of popular whims and prejudices; for the assertions "that evil communications corrupt good manners,"[2] is not more true than its reverse. We have allowed this house the power to impeach, but we have tenaciously reserved the right to try. We hope gentlemen, you will see the policy of this clause—for what matters it who accuses, if the accused is tried by his friends—In fine, this *plebian house* will have little power, and that little be rightly shaped by our house of *gentlemen*, who will have a very extensive influence, from their being chosen out of the *genteeler class*, and their appointment being almost a life, one as seven years is the calculation on a man's life, and they are chosen for six: It is true, every third senatorial seat is to be vacated duennually, but two-thirds of this influential body will remain in office, and be ready to direct or (if necessary) bring over to the good old way, the young members, if the old ones should not be returned; and whereas many of our brethren, from a laudable desire to support their rank in life above the commonality, have not only deranged their finances, but subjected their persons to indecent treatment (as being arrested for debt, &c.) we have framed a privilege clause, by which they may laugh at the fools who trusted them; but we have given out, that this clause was provided, only that the members might be able without interruption, to deliberate on the important business of their country.

We have frequently endeavoured to effect in our respective states, the happy discrimination which pervades this system, but finding we

could not bring the states into it individually, we have determined, and in this our general plan we have taken pains to leave the legislature of each *free and independent* state, as they now call themselves, in such a situation that they will eventually be absorbed by our *grand continental vortex*, or dwindle into petty corporations; and have power over little else than *yoaking hogs* or determining the width of *cart wheels*—but (aware that an intention to annihilate state legislatures, would be objected to our favorite scheme) we have made their existence (as a *board of electors*) necessary to ours; this furnishes us and our advocates with a fine answer to any clamours that may be raised on this subject, viz—We have so interwoven continental and state legislatures that they cannot exist separately; whereas we in truth, only leave them the power of electing us, for what can a provincial legislature do when we possess "the exclusive regulation["] of external and internal commerce, excise, duties, imposts, post-offices and roads; when we and we alone, have the power to wage war, make peace, coin money (if we can get bullion) if not, borrow money, organize the militia and call them forth to execute our decrees, and crush insurrections assisted by a noble body of veterans subject to our nod, which we have the power of raising and keeping even in the time of peace. What have we to fear from state legislatures or even from states; when we are armed with such powers, with a president at our head? (a name we thought proper to adopt in conformity to the prejudices of a silly people who are so foolishly fond of a Republican government, that we were obliged to accommodate in names and forms to them, in order more effectually to secure the substance of our proposed plan, but we all know that Cromwell was a King, with the title of protector.) I repeat it, what have we to fear armed with such powers, with a president at our head who is captain-general of the army, navy and militia of the United States, who can make and unmake treaties, appoint and commission ambassadors and other ministers, who can grant or refuse reprieves or pardons, who can make judges of the supreme and other continental courts, in short who will be the source, the fountain of honor, profit and power, whose influence like the rays of the sun, will diffuse itself far and wide, will exhale all *democratical vapours* and break the *clouds of popular insurrection?* But again gentlemen, our judicial power is a strong work, a masked battery, few people see the guns we can and will ere long play off from it; for the judicial power embraces every question which can arise in law or equity, under this constitution and under the laws of "the United States"—(which laws will be you know, the supreme laws of the land)—This power

extends to all cases, affecting ambassadors or other public ministers, and ''consuls to all cases of admiralty and maratime jurisdiction—to controversies to which the United States are 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.''

Now, can a question arise in the colonial courts, which the ingenuity or sophistry of an able lawyer may not bring within one or other of the above cases? Certainly not. Then our court will have original or appellate jurisdiction in all cases—and if so how fallen are state judicatures—and must not every provincial law yield to our supreme fiat? Our constitution answers yes—then how insignificant will the makers of these laws be—it is in the nature of power to create influence—and finally we shall entrench ourselves so as to laugh at the cabals of the commonality—a few regiments will do at first, it must be spread abroad that they are absolutely necessary to defend the frontiers. Now a regiment and then a legion must be added quietly, by and bye a frigate or two must be built, still taken care to intimate that they are essential to the support of our revenue laws and to prevent smuggling. We have said nothing about a bill of rights, for we viewed it as an eternal clog upon our designs—as a lock chain to the wheels of government—though by the way as we have not insisted on rotation in our offices, the simile of a wheel is ill. We have for some time, considered the freedom of the press as a great evil—it spreads information, and begets a licentiousness in the people which needs the rein more than the spur; besides a daring printer may expose the plans of government and lessen the consequence of our president and senate; for these and many other reasons we have said nothing with respect to the ''right of the people to speak and publish their sentiments,'' or about their ''palladiums of liberty,'' and such stuff. We do not much like that sturdy privilege of the people—the right to demand the writ of *habeas corpus*—we have therefore reserved the power of refusing it in cases of rebellion, and you know we are the judges of what is rebellion. Things as yet are well—Our friends we find have been assiduous in representing our federal calamities, until at length the people at large frightened by the gloomy picture on one side, and allured by the prophecies of some of our fanciful and visionary adherents on the other, are ready to accept and confirm our proposed government without the delay or forms of examination, which was the more to be wished as they are wholly unfit

to investigate the principles or pronounce on the merit of so exquisite a system. Impressed with a conviction that this constitution is calculated to restrain the influence and power of the LOWER CLASS—to draw that *discrimination* we have so long sought after, to secure to our friends *privileges and offices*, which were not to be valued on under the former government, because they were in common—to take the burthen of *legislation and attendance on public business* off the commonality, who will be much better able thereby to prosecute with effect their private business, to destroy that *political thirteen headed monster* the state sovereignties, to check the *licentiousness* of the people by making it dangerous to *speak or publish* daring or tumultuary sentiments, to enforce obedience to laws by a *strong executive*, aided by *military pensioners*, and finally to promote the public and private interests of the *better kind* of people. We submit it to your judgement to take such measure for its adoption as you in your wisdom may think fit.

Signed by unanimous order of the lords spiritual and temporal

MONTEZUMA, President.

1. Reprinted in the *New York Morning Post*, 24 October.
2. 1 Corinthians, 15:33.

Elbridge Gerry to the Massachusetts General Court
New York, 18 October 1787[1]

GENTLEMEN, I have the honour to inclose, pursuant to my commission, the constitution proposed by the federal Convention.

To this system I gave my dissent, and shall submit my objections to the honourable Legislature.

It was painful for me, on a subject of such national importance, to differ from the respectable members who signed the constitution: But conceiving as I did, that the liberties of America were not secured by the system, it was my duty to oppose it.—

My principal objections to the plan, are, that there is no adequate provision for a representation of the people—that they have no security for the right of election—that some of the powers of the Legislature are ambiguous, and others indefinite and dangerous[2]—that the Executive is blended with and will have an undue influence over the Legislature—that the judicial department will be oppressive—that treaties of the highest importance may be formed by the President with the advice of two thirds of a *quorum* of the Senate—and that the system is without the security of a bill of rights. These are objections which are not local, but apply equally to all the States.

As the Convention was called for "the *sole* and *express* purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions as shall render the Federal Constitution adequate to the exigencies of government and the preservation of the union,"[3] I did not conceive that these powers extended to the formation of the plan proposed, but the Convention being of a different *opinion*, I acquiesced in *it*, being fully convinced that to preserve the union, an efficient government was indispensibly necessary; and that it would be difficult to make proper amendments to the articles of Confederation.

The Constitution proposed has few, if any *federal* features, but is rather a system of *national* government: Nevertheless, in many respects I think it has great merit, and by proper amendments, may be adapted to the "exigencies of government," and preservation of liberty.

The question on this plan involves others of the highest importance—1st. Whether there shall be a dissolution of the *federal* government? 2dly. Whether the several State Governments shall be so altered, as in effect to be dissolved? and 3dly. Whether in lieu of the *federal* and *State* Governments, the *national* Constitution now proposed shall be substituted without amendment? Never perhaps were a people called on to decide a question of greater magnitude—Should the citizens of America adopt the plan as it now stands, their liberties may be lost: Or should they reject it altogether Anarchy may ensue. It is evident therefore, that they should not be precipitate in their decisions; that the subject should be well understood, lest they should refuse to *support* the government, after having *hastily* accepted it.

If those who are in favour of the Constitution, as well as those who are against it, should preserve moderation, their discussions may afford much information and finally direct to an happy issue.

It may be urged by some, that an *implicit* confidence should be placed in the Convention: But, however respectable the members may be who signed the Constitution, it must be admitted, that a free people are the proper guardians of their rights and liberties—that the greatest men may err—and that their errours are sometimes, of the greatest magnitude.

Others may suppose, that the Constitution may be safely adopted, because therein provision is made to *amend* it: But cannot *this object* be better attained before a ratification, than after it? And should a *free* people adopt a form of Government, under conviction that it wants amendment?

And some may conceive, that if the plan is not accepted by the people, they will not unite in another: But surely whilst they have the power to amend, they are not under the necessity of rejecting it.

I have been detained here longer than I expected, but shall leave this place in a day or two for Massachusetts, and on my arrival shall submit the reasons (if required by the Legislature) on which my objections are grounded.

I shall only add, that as the welfare of the union requires a better Constitution than the Confederation, I shall think it my duty as a citizen of Massachusetts, to support that which shall be finally adopted, sincerely hoping it will secure the liberty and happiness of America.

I have the honour to be, Gentlemen, with the highest respect for the honourable Legislature and yourselves, your most obedient, and very humble servant, E. GERRY.

1. Gerry's letter was addressed to "The Hon. Samuel Adams, Esq. President of the Senate; and The Hon. James Warren, Esq. Speaker of the House of Representatives." It was printed in the *Massachusetts Centinel* on 3 November 1787 with the following preface: "(The following Letter, on the subject of the American Constitution, from the Hon. ELBRIDGE GERRY, Esq. one of the Delegates representing this Commonwealth in the late Federal Convention, to the Legislature, was on Wednesday last [31 October] read in the Senate and sent down to the House of Representatives, where it was yesterday read and sent up. As it contains opinions on a subject of the first importance to our country at this day, we have obtained a copy of it for insertion—and are happy to have it in our power thus early to communicate it to the publick.)"

By 21 November, Gerry's letter was printed in the other ten Massachusetts newspapers, and by 4 January 1788 it was reprinted in thirty-one newspapers outside Massachusetts: N.H. (1), R.I. (2), Conn. (6), N.Y. (4), N.J. (1), Pa. (9), Md. (3), Va. (3), N.C. (1), Ga. (1). It was also reprinted in the November issue of the Philadelphia *American Museum* and in two pamphlet anthologies published in Richmond, Va., in December 1787 (CC:350). For the impact of the letter, see CC:227.

2. In an essay in the Boston *American Herald* on 18 April 1788, Gerry stated that the "*indefinite* and *dangerous*" powers of Congress referred to "the unlimited power of Congress, to keep up a standing army in time of peace, and their entire control of the militia . . ." (CC:691, p. 175).

3. See CC:1.

A Citizen of Philadelphia
Remarks on the Address of Sixteen Members
Philadelphia, 18 October 1787 (excerpt)

On 26 September 1787 the Pennsylvania Assembly adopted a resolution calling a state convention to consider whether or not to ratify the Constitution. The Assembly adjourned before providing for the election of delegates. When it reassembled later that day, nineteen members were absent depriving the Assembly of a quorum. The next day, two of the absent members were forced

to return and provision was made to elect delegates to the state convention. Most of the seceding assemblymen signed an address outlining their objections to the Constitution and denouncing the forcible return of two of the seceding assemblymen. The address was published as a broadside on 2 October (BoR, II, 16–17).

The most comprehensive criticism of the address of the seceding Pennsylvania assemblymen was a pamphlet written by Pelatiah Webster (1726–1795), a Philadelphia merchant, under the pseudonym "A Citizen of Philadelphia." (The entire portion of this pamphlet which answers the address' objections to the Constitution is printed as CC:125–B.) Webster's pamphlet, published and advertised for sale by Eleazer Oswald on 18 October, was entitled: *Remarks on the Address of Sixteen Members of the Assembly of Pennsylvania, To Their Constituents, Dated September 29, 1787. With some Strictures on their Objections to the Constitution, Recommended by the Late Federal Convention, Humbly offered to the Public* (Evans 20871).

The pamphlet circulated in Pennsylvania, New York, and Massachusetts (Tench Coxe to James Madison, 21 October, CC:183–B; John King to Benjamin Rush, 5–6 November, RCS:Pa., 208; and Pelatiah Webster to James Bowdoin, 16 November, RCS:Mass., 302n).

. . . 5. They object that the *liberty of the press is not asserted* in the constitution. I answer neither are any of the ten commandments, but I don't think that it follows that it was the design of the convention to sacrifice either the one or the other to contempt, or to leave them void of protection and effectual support.

6. 'Tis objected further that the constitution contains *no declaration of rights*. I answer this is not true,—the constitution contains a declaration of many rights, and very important ones, e.g. that people shall be obliged to fulfil their contracts, and not avoid them by tenders of any thing less than the value stipulated; that no *ex-post facto* laws shall be made &c. but it was no part of the business of their appointment to make a code of laws—it was sufficient to fix the constitution right, and that would pave the way for the most effectual security of the rights of the subject.

7. They further object that no provision is made against *a standing army in time of peace*. I answer that a standing army, i.e. regular troops are often necessary in time of peace, to prevent a war, to guard against sudden invasions, for garrison duty, to quel mobs and riots, as guards to congress and perhaps other courts, &c. &c. as military schools to keep up the knowledge and habits of military discipline and exercise, &c. &c. and as the power of raising troops is rightfully, and without objection, vested in congress, so they are the properest and best judges of the number requisite and of the occasion, time and manner of em-

ploying them, if they are not wanted on military duty, they may be employed in making public roads, fortifications, or any other public works—they need not be a useless burden to the states: And for all this the prudence of congress must be trusted, and no body can have a right to object to this, till they can point out some way of doing better.

8. Another objection is, that the new constitution *abolishes tryals by jury in civil causes*. I answer, I don't see one word in the constitution, which by any candid construction can support even the remotest suspicion that this ever entered the heart of one member of the convention. I therefore set down the suggestion for sheer malice, and so dismiss it. . . .

An Old Whig III

Philadelphia Independent Gazetteer, 20 October 1787 (excerpt)[1]

. . . The author of the speech tells us, that a bill of rights would have been superfluous and absurd; because "no powers are given to Congress but what are expressly given;" and "that we shall still enjoy those privileges of which we are not divested either by the intention or the act that brought that body into existence.[2]—For instance, the liberty of the press.—What controul can proceed from the federal government to shackle or destroy that sacred palladium of national freedom?"—What controul!—Suppose that an act of the continental legislature should be passed to restrain the liberty of the press;—to appoint licensers of the press in every town in America;—to limit the number of printers;—and to compel them to give security for their good behaviour, from year to year, as the licenses are renewed: If such a law should be once passed, what is there to prevent the execution of it?—By the sixth article of the proposed constitution, this act of the continental legislature is "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."—Suppose a printer should be found hardy enough to contravene such a law when made, and to contest the validity of it.—He is prosecuted we will suppose, in this state—he pleads in his defence, that by the constitution of Pennsylvania, it is declared "that the freedom of the press ought not to be restrained."[3]—What will this avail him? The judge will be obliged to declare that "*nothwithstanding the constitution of any state*," this act of the continental legislature which restrains the freedom of the press, is "the supreme law; and we must punish you—The bill of rights of Pennsylvania is nothing here. That bill of rights indeed is binding upon the

legislature of Pennsylvania, but it is not binding upon the legislature of the continent.'' Such must be the language and conduct of courts, as soon as the proposed continental constitution shall be adopted.

As to the trial by jury, the question may be decided in a few words. Any future Congress sitting under the authority of the proposed new constitution, may, if they chuse, enact that there shall be no more trial by jury, in any of the United States; except in the trial of crimes; and this ''SUPREME LAW'' will at once annul the trial by jury, in all other cases. The author of the speech supposes that no danger ''can possibly ensue, since the proceedings of the supreme court are to be regulated by the Congress, which is a faithful representation of the people; and the oppression of government is effectually barred; by declaring that in all criminal cases the trial by jury shall be preserved.'' Let us examine the last clause of this sentence first.—I know that an affected indifference to the trial by jury has been expressed, by some persons high in the confidence of the present ruling party in some of the states;—and yet for my own part I cannot change the opinion I had early formed of the excellence of this mode of trial even in civil causes. On the other hand I have no doubt that whenever a settled plan shall be formed for the extirpation of liberty, the banishment of jury trials will be one of the means adopted for the purpose.—But how is it that ''the oppression of government is effectually barred by declaring that in all criminal cases the trial by jury shall be preserved?''—Are there not a thousand civil cases in which the government is a party?—In all actions for penalties, forfeitures and public debts, as well as many others, the government is a party and the whole weight of government is thrown into the scale of the prosecution yet these are all of them civil causes.—These penalties, forfeitures and demands of public debts may be multiplied at the will and pleasure of government.—These modes of harrassing the subject have perhaps been more effectual than direct criminal prosecutions.—In the reign of Henry the Seventh of England, Empson and Dudley acquired an infamous immortality by these prosecutions for penalties and forfeitures:[4]—Yet all these prosecutions were in the form of civil actions; they are undoubtedly objects highly alluring to a government.—They fill the public coffers and enable government to reward its minions at a cheap rate.—They are a profitable kind of revenge and gratify the officers about a court, who study their own interests more than corporal punishment.—Perhaps they have at all times been more eagerly pursued than mere criminal prosecutions.—Shall trial by jury be taken away in all these cases and shall we still be told that ''we are effectually secured against the oppressions of government?'' At this rate Judges may sit in the United States, as they did in

some instances before the war, without a jury to condemn people's property and extract money from their pockets, to be put into the pockets of the judges themselves who condemn them; and we shall be told that we are safe from the oppression of government.—No, Mr. Printer, we ought not to part with the trial by jury; we ought to guard this and many other privileges by a bill of rights, which cannot be invaded. The reason that is pretended in the speech why such a declaration; as a bill of rights requires, cannot be made for the protection of the trial by jury;—"that we cannot with any propriety say 'that the trial by jury shall be as heretofore'" in the case of a federal system of jurisprudence, is almost too contemptible to merit notice.—Is this the only form of words that language could afford on such an important occasion? Or if it were to what did these words refer when adopted in the constitutions of the states?—Plainly sir, to the trial by juries as established by the common law of England in the state of its purity;—That common law for which we contended so eagerly at the time of the revolution, and which now after the interval of a very few years, by the proposed new constitution we seem ready to abandon forever; at least in that article which is the most invaluable part of it; the trial by jury. . . .

1. Reprinted: *New York Journal*, 1 December. For the entire piece, see CC:181. For the authorship of the "Old Whig" essays, see BoR, II, 35.

2. See James Wilson's speech, 6 October, BoR, II, 25–28.

3. See Article 12 of the Pennsylvania Declaration of Rights, BoR, I, 96.

4. Sir Richard Empson and Sir Edmund Dudley were executed in 1510 for their unpopular efforts to raise money owed King Henry VII.

An American Citizen IV: On the Federal Government Philadelphia, 21 October 1787 (excerpts)

"An American Citizen" IV—written by Tench Coxe at the behest of James Wilson, Benjamin Rush, and others—was first published on or before 21 October as part of a four-page broadside anthology by Hall and Sellers of the *Pennsylvania Gazette*. (For the broadside, see the Editors' Note, 21 October, CC:Vol. 1, pp. 430–31.) On 24 October "An American Citizen" IV was printed in the *Pennsylvania Gazette* and the Philadelphia *Independent Gazetteer* with some textual variations. By 10 December the essay was reprinted in nine other newspapers: Mass. (1), Conn. (1), N.Y. (1), N.J. (1), Pa. (2), Md. (1), Va. (1), S.C. (1). It also appeared in the October issue of the Philadelphia *American Museum* and in a Richmond pamphlet anthology (CC:350). For the full text, see CC:183–A.

. . . 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 *innocence*

permitted, and to which *patriotism impelled 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 old fœderal 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 fœderal 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. *Tryal by jury will therefore be in the express words of the Pennsylvania constitution*, "*as heretofore*,"[1]—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, assumptions, 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 fœderal 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 fœderal court*. This is surely a *great advantage*, and promises a *fair trial*, and an *impartial judgment*. The trial by jury is *not excluded* in these fœderal 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 offence, 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 fœderal 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 the mode in every case, wherein it is practicable. This will be adjusted by law, and it could not be done otherwise. In short, the sphere of jurisdiction for the fœderal courts *is limited*, and that sphere only is subject to the regulations of our fœderal 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 fœderal regulations on the property of a president, a senator, a 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 fœderal constitution protects the accused, till he shall be convicted, from the hands of power, by rendering *a jury the indispensible judges of all crimes*. . . .

1. Section 25 of the Pennsylvania constitution of 1776 (BoR, I, 97).

Henry Knox to Marquis de Lafayette
New York, 24 October 1787 (excerpts)[1]

You will have received long before this period, the result of the Convention which assembled in Philadelphia during the month of May—These propositions being essentially different, in many respects from the existing Confederation, and which will probably produce different national effects, are contemplated by the public at large with an anxious attention. The discussions are commenced in the news papers & in Phamphetts, with all the freedom & liberality which characterize a people who are searching by their own experience after a form, of government most productive of happiness—

To speak decisively at this moment of the fate of the proposed constitution characterizes effectually the person, giving the opinion—Habited as I have been for a long period to desire the consolodation of the powers of all parts of this country as an indispensible [– – –] to a national character & national happiness, I receive the propositions as they are and from my soul I wish them Godspeed—The transition from, wishing an event to beleiving that it will happen is easy indeed—Perhaps I therefore am led in to a strong persuasion that the proposed government will be generally or universally adopted in the course of twelve or fifteen months—

In desiring that the proposed government may be adopted I would not that you should beleive that I think it all perfect—There are several

things in it that I confess I could wish to be altered—But I apprehend no alterations can be effected peaceably—All the states represented agreed to the constitution as it stands—There are substantial reasons to beleive that such an agreement could not again be produced even by the same men—The minds of the people at large were fully prepared for a change without any particular specification—The proposition will be discussed fully—parties will be raised—were therefore the same work to be again discussed the representatives of the different States would repair to the convention with instructions, restricting their assent unless certain powers favor[abl]e to the interest of the particular States should be established—Hence it would result, that no agreeme[nt] could be made which depended on their mutual accomodation—This single circumstance, independent of the commotions which might & probably would arise in the interim is sufficient of itself to point out the importance and value of the new Constitution. . . .
N.B. I enclose, one of the new constitution with Charles Thompsons name to it[2] to be placed among yours of curiosity

1. Dft, Knox Papers, GLC0243.03680, The Gilder Lehrman Collection, The Gilder Lehrman Institute of American History, at the New-York Historical Society.

2. Probably one of the 500 Dunlap and Claypoole broadsides of the report of the Constitutional Convention (CC:76).

A Citizen

Pennsylvania Carlisle Gazette, 24 October 1787 (excerpt)[1]

To the People of Pennsylvania

Fellow Citizens,

. . . I must request you now to consider the object of this government, the plan of which you have under consideration. It is the firm union and welfare of all the states as one confederated body. It is not a government of individuals directly and immediately; this is the business of the particular state legislatures, and belongs to their internal police.

From this you will see that such a government must necessarily have supreme power in all things which respect the general welfare or good of the whole taken as one collective body,—a power to controul each particular state when it acts contrary to this general good, and oblige it to contribute its part to this purpose, if in any instance it should refuse. A moments reflection will convince you that if we are to be united states at all, nothing short of this can answer the purpose: and if you examine the powers vested in congress by the proposed plan, the same reflection will satisfy you, that they are all necessary for the attainment of this end. I wish not to conceal any thing on this subject

that I know. ⟨If you say the particular states will be abridged of some of the powers they now possessed; I grant they will. But consider the advantage to be obtained thereby, that is, the united force of the whole to protect the rest. This is necessary in all social compacts,—without it there can be no government at all, either of individuals, or of states: and if you ask how much should be given up; I answer, just so much as is necessary to secure the enjoyment of what remains. The consideration of the nature and object of this general government will also shew you how weak it is to talk of a bill of rights in it. It is a government of states; not of individuals. The constitution of each state has a bill of rights for its own citizens; and the proposed plan guaranties to every state a republican form of government for ever. But it would be a novelty indeed to form a bill of rights for states. The same observation will apply to the liberty of the press; which is secured by each state to itself—and also to trial by jury in many civil causes that may come before the courts of congress.⟩ Suppose, for instance, that a trial between two states should come on, where will you get a jury of their peers? You must bring twelve states together to try them. The bare stating of the case is sufficient to refute the objection; considering then the nature of the civil causes which the courts of congress are appointed to try, it would be absurd to ordain it should be by jury in all cases. . . .

1. Reprinted: *Pennsylvania Gazette*, 7 November; Boston *American Herald*, 26 November; Providence, R.I., *United States Chronicle*, 13 December. The text within angle brackets was reprinted in the *New Jersey Journal*, 14 November. For the entire piece, see RCS:Pa. Supplement, 438–44.

Centinel II

Philadelphia Freeman's Journal, 24 October 1787 (excerpts)

"Centinel" II, in part a reply to James Wilson's speech of 6 October (BoR, II, 25–28), had a direct influence on some Pennsylvanians. For instance, Francis Murray wrote that "Centinel" II and other Antifederalist writings "greatly changed" his sentiments on the Constitution (to John Nicholson, 1 November, RCS:Pa., 207), while John Smilie of Fayette County relied heavily on "Centinel" II in his speech of 8 December in the Pennsylvania Convention (RCS: Pa., 525–26, 531n).

This essay was reprinted six times by 13 December: Mass. (1), R.I. (1), N.Y. (2), Md. (1), Va. (1). For the entire piece, see CC:190. For its publication as a broadside and in pamphlets and for authorship, see BoR, II, 21–23.

To the PEOPLE *of* PENNSYLVANIA.

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. . . .

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. . . .

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 *wellborn* 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 biass 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."[1]

The attempt of governor [Cadwallader] *Colden*, of New-York, before the revolution to re-examine the *facts* and re-consider the *damages*, in the case of *Forsey* against *Cunningham*, produced about the year 1764, a flame of patriotic and successful opposition, that will not be easily forgotten.[2] . . .

From the foregoing illustration of the powers proposed 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 we then make 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 case 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 consciences 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 ministry, 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 well as criminal, and the modes prescribed by the common law for safety of life in 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 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 held sacred*; that the people have a right to hold themselves, their houses, papers and possessions free from search or seizure; 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 sus-

pected 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. . . .

1. Blackstone, *Commentaries*, Book III, chapter 23, pp. 379–80.

2. The proceedings of the case were published in 1764 by New York printer John Holt. See Milton M. Klein, "Prelude to Revolution in New York: Jury Trials and Judicial Tenure," *William and Mary Quarterly*, 3rd series, XVII (1960), 439–62.

An Old Constitutionalist
Philadelphia Independent Gazetteer, 26 October 1787 (excerpt)[1]

A *LETTER* TO A *FRIEND*

. . . You here see, my friend, the power granted to the delegates in convention; and upon a candid examination of the proposed federal constitution, you will be enabled to judge whether these servants of the public have adhered to their appointment; or arrogated to themselves a power with which they were not invested. I do not here intend to make any observations on the proposed *system* of government:—that has been done already by able pens. Therefore, I will conclude this letter with observing—that it is the undoubted right of every free citizen in America, to take under their consideration the proposed federal constitution, and examine it candidly and deliberately—and if they find that it secures unto them those privileges, which they are intitled to as *freemen*, then let them unanimously adopt it. But on the contrary, if it deprives us of those rights, which should be secured to us by a *bill of rights*, and if we shall not be granted the privilege of either altering or amending, then let us with manly fortitude reject it.

1. For the entire piece, see RCS:Pa. Supplement, 458–61.

Richard Henry Lee to Samuel Adams
New York, 27 October 1787[1]

My dear friend,

Our mutual friend Mr. Gerry furnishes me with an opportunity of writing to you without danger of my letter being stopt on its passage, as I have some reason to apprehend has been the case with letters written by me and sent by the Post—Under this impression it is, that I send you herewith a Copy of my letter to you of the 5th of this month. Major Sergeant[2] delivered me the letter that you were pleased to write me on the 8th. instant, by which I see that you supposed me to have

been a Member of the late Convention. I did early decline being a Member of that Body,[3] because I was a Member of Congress, and the proposed plan stated, that Congress should review, & if they approved, transmit the proposed *amendments to the Confederation*, (for that was the Idea, and indeed the only idea that the present federal plan admits of, or that the powers delegated to the Convention countenanced) to the 13 States for approbation and ratification. In this view of the business, it appeared to me an inconsistency that the same Men should in N. York review their own doings at Philadelphia. And this opinion was fully verified when the Members of Convention came to Congress in such numbers with their own plan, that the Votes of 3 States were Convention Votes, 2 others divided by Conventioners, and Conventioners mingled with many other States. It is Sir most obvious, that the Constitution proposed by the Convention could not have a dispassionate and impartial consideration in Congress[4]—And indeed it had not. In my letter to you of the 5th. instant, I sent you the amendments that I proposed in Congress; if they, with my letter sh[ould] have miscarried, our friend Mr. Gerry can furnish you with them.[5] Mr. Wilson of Phila. has appeared in print with the Convention reasons in support of their profferd plan[6]—How he has succeeded, Mr. Gerry will inform you. The Press has produced such Manly and well reasoned refutations of him and his System, that both have lost ground amazingly in the public estimation. His principal Sophism is, that bills of rights were necessary in the State Constitutions because every thing not reserved was given to the State Legislatures, but in the Federal government, every thing was reserved that was not given to the federal Legislature. This is clearly a distinction without difference. Because Independent States are in the same relation to each other as Individuals are with respect to uncreated government. So that if reservations were necessary in one case, they are equally necessary in the other. But the futility of this distinction appears from the conduct of the Convention itself, for they have made several reservations—every one of which proves the Rule in Conventional ideas to be, that what was not reserved was given—For example, they have reserved from their Legislature a power to prevent the importation of Slaves for 20 years, and also from Creating Titles. But they have no reservation in favor of the Press, Rights of Conscience, Trial by Jury in Civil Cases, or Common Law securities.

As if these were of less importance to the happiness of Mankind than the making of Lords, or the importations of Slaves! The essential defects in the construction of the Legislature, and the dangerous blending of the Legislative and Executive powers, so as to prevent all Responsibility, are such radical objections, as render this plan inadmissible, in my opinion, without amendments. The Baron Montesquieu says "that the

English is the only nation in the world, where political or civil liberty is the direct end of its constitution".[7] I once thought that our free governments were intitled to the same praise. But the System under consideration, seems to have reversed the above idea—The acquisition of power unlimited, not the security of Civil liberty appears to be the object. Arbitrary government is indeed so carefully intrenched and barricaded against democratic influences, that I am very much mistaken if Civil Liberty does not expire under its operation. The friends of just Liberty here are astonished at the Occlusion of the Press in Boston at a season so momentous to Mankind.[8] It is thought to augur ill of the New Government proposed, that on its being first ushered into the world, it should destroy the great Palladium of human rights—And at Boston too, where first the Presses pointed America to resist attempts upon her liberty & rights; there to find the great Organ of free communication stopped, when that was under consideration, which of all sublunary things demands the freest and fullest discussion: Government, upon the goodness or badness of which, almost depends, whether we shall rank among Men or Beasts! When you are pleased to write to me, your letter, by being enclosed to our friend Mr. [Samuel] Osgood of the Treasury here, will be forwarded *safely* to me in Virginia, for which place I shall set out from hence on the 4th of next month—

My best respects to your Lady, & I pray to be remember'd to Gen. Warren, Mr. Lovell, & Doct. Holten.

1. RC, Samuel Adams Papers, NN. This seven-page manuscript starts with Lee's 5 October letter (BoR, II, 18–20) followed by his 27 October letter. Only minor variations exist between the original and copied versions of the 5 October letter. For Adams's response of 3 December to Lee's letters, see BoR, II, 180–81.

2. On 5 October Congress had appointed Winthrop Sargent, of Massachusetts, secretary of the Northwest Territory.

3. On 20 March 1787 the Virginia Executive Council appointed Lee a delegate to the Constitutional Convention. He was replaced by James McClurg on 5 April.

4. For a similar complaint, see Arthur Lee to John Adams, 3 October (CC:127).

5. For Lee's amendments presented to Congress on 27 September, see BoR, I, 145–48.

6. See James Wilson's Speech, 6 October 1787 (BoR, II, 25–28).

7. See Blackstone, *Commentaries*, Book I, Chapter 1, pp. 140–41, which cites Montesquieu, *Spirit of Laws*, I, Book XI, chapter V, 220–21 ("Of the End or View of different Governments").

8. See CC:131.

A Confederationalist
Pennsylvania Herald, 27 October 1787 (excerpt)[1]

. . . But after all, it is a plan submitted to the consideration of the people: and whether the officers of the present government, or those

who are arriving at offices under the new, are for it or against, matters not: Those are not the marks by which it ought to be either received or rejected. The jury to question is, whether it is a plan of government formed upon *revolution principles*, and the liberty and happiness of the people fully and effectually secured? If it be such a plan of government as the people, who are, and ought, and WILL be the judges, believe has the essentials for these grand ends: it will be adopted in the face of all the opposition that the officers of the present government can possibly make to it. If not all those who are waiting to fill the numerous offices which will be created by it, if adopted, cannot possibly impose it on the people. I say the question ought to be whether the plan, if adopted, will secure to the people the blessings of a free and equal government? And surely it will be allowed that disputing about the persons who approve or disapprove, will never enable us to answer this question. Let the plan itself be considered, the objections made against it—and the answers to those objections. Certainly this is the only mode upon which a sensible and enlightened people ought to determine. I must own that I read the objections made to the proposed plan of government with a degree of resentment—yet I wished to see them answered. But when I see them repeatedly made, and no attempt to answer them but by abusing the supposed authors, I begin to think them serious, and that they demand attention. The liberty of the press, for example, is said to be invaded, or not secured. How is the objection answered? Why either by direct abuse, or by direct contradiction, without any argument to shew the complaint ill-founded.

Permit me Mr. Editor to make a few remarks upon a piece in the paper of Messrs. Hall and Sellers of Wednesday last, signed, "Federal Constitution,"[2] This writer tells us that the convention, "neglected" to mention, "the liberty of the press from a respect to the state constitutions," in each of which it is secured. But surely sir, the gentleman must be mistaken, for it is plain that the constitutions of the states are absolutely destroyed—not by construction only—for the thing is done in plain words: there is nothing equivocal or ambiguous in the expression. The words are, "This constitution, *and all 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." I ask, is there a man of common understanding that can hesitate as to the full and plain meaning of those words? at least to my sense there can be nothing more clearly expressed or easier understood, "he that runs may read."[3] I beg leave to be un-

derstood, that I am not now arguing against the propriety of vesting the supreme power in congress, and of setting the constitution and laws of Congress above those of the separate states: perhaps it is right and best that it should be so. But I do insist, that before the people give up to congress the rights and privileges secured to them by the constitution of the state, they ought to have those rights and privileges fully and unequivocally secured to them by an instrument which *shall compose part of the federal constitution.* The writer above hinted at informs us that the "liberty of the press would have been an inherent and political right as long as nothing was said against it." I say that a declaration of those inherent and political rights ought to be made in a BILL OF RIGHTS, that the people may never lose their liberties by construction. If the liberty of the press be an inherent political right, let it be so declared, that no despot however great shall *dare to gain say it.* If it is not so declared it may be denied. Declare it to be an inherent and political right, and that it ought to be held sacred, and we then shall be certain upon what ground we stand. When this declaration is made, let the *attorney general*, of the United States, *file an information* against me for a *libel*; I will carry that declaration in my hand, as my shield and my constitutional defence.

Lancaster, Oct. 21, 1787.

1. Reprinted: Boston *Independent Chronicle*, 15 November; Portland, Maine, *Cumberland Gazette*, 30 November; Massachusetts *Salem Mercury*, 4 December. For the entire piece, see RCS:Pa. Supplement, 462–65.

2. "Foederal Constitution," *Pennsylvania Gazette*, 10 October (BoR, II, 31).

3. See *Poems, by William Cowper, of the Inner Temple, Esq. Volume the Second* . . . (2nd edition, London, 1786), 295; Habakkuk, 2:2.

"M.C."

Pennsylvania Herald, 27 October 1787

"M.C." was also printed in the Philadelphia *Independent Gazetteer*, *Pennsylvania Journal*, and *Pennsylvania Packet* on 27 October. By 27 December it had been reprinted in seven other newspapers: Vt. (1), Mass. (3), R.I. (1), Conn. (1), N.J. (1).

"M.C." was one of the first widely circulated newspaper accounts to recommend that a bill of rights be submitted to state conventions for their consideration—an action supported by some Pennsylvania Antifederalists. For example, Francis Murray, of Bucks County, stated that he "should like something done like the plan proposed by M.C." (to John Nicholson, 1 November, RCS:Pa., 208). Other Pennsylvania Antifederalists favored a second constitutional convention as the means to amend the Constitution. (See "Centinel" I–II and "An Old Whig" I, IV, and V, BoR, II, 21–25, 60–64, 35–39, 70–72, 87–90, respectively.)

To the EDITOR of the PENNSYLVANIA HERALD.

SIR, The present is universally acknowledged to be a most momentous æra, as likely to decide the fate of a world for future ages. This consideration renders it the duty of every individual to submit to the consideration of his fellow citizens whatever he may deem calculated to elucidate the grand subject in general discussion.

The opposition to the new constitution is said to be made by interested men. This assertion is true only in part. It is possible, indeed, that the most violent, the most active, and the most voluminous writers against the proposed system are generally influenced by sinister and personal considerations. But there are many persons, whose apprehensions have been excited by the Centinels, the Old Whigs, the Democratic Federalists, and the Catos, and whose opposition is patriotic and disinterested, as they are fearful for the liberty of posterity, and anxious to prevent future encroachments of Congress. To satisfy the minds of those people, I venture, but with great diffidence, to propose a plan, which may possibly remove great part of the present opposition.

Let a meeting of the citizens be called, and a proper committee appointed to frame a bill of rights, for securing the liberty of the press, and all other rights which the states hold sacred. Let this bill of rights be transmitted to the several state conventions, to be taken into consideration with the new constitution. Little doubt need be entertained but that it would be universally agreed to.

This measure, if adopted, would draw a line of distinction between the detestable few who would sacrifice the interest and happiness of not only the present, but distant generations to their own emolument, and those who oppose the new system from a patriotic, but perhaps mistaken, dread of danger. The former would be left destitute of the vain covering under which they shelter their want of virtue and public spirit:—and the latter would become zealous federalists.

To the friends of the proposed constitution, I beg leave to observe, that this measure cannot possibly retard or affect the success of a plan which has justly met with their admiration. Even admitting that no such precaution is really necessary, would it not be adviseable to indulge the honest prejudices of many of their fellow citizens? This much, at least, may be said in favor of my plan, that even if it does no good, it can do no possible injury.

I submit it to the candour of the opposers of the new constitution, whether it would not be better to unite in this or some similar plan, than to attempt to defeat the wishes and desires of the continent for an efficient form of government, which is confessedly all that is nec-

essary to restore America to her lost splendor, consequence, credit, and happiness?

Should this hint be attended to, and produce the good effect I hope for, I shall esteem it the most fortunate idea that ever occurred to Your humble servant, M.C.

Market-street, Oct. 26, 1787.

An Old Whig IV
Philadelphia Independent Gazetteer, 27 October 1787 (excerpt)

"An Old Whig" IV was the most widely circulated of a series of eight "Old Whig" essays printed between 12 October 1787 and 6 February 1788. Two days after it appeared, the *Independent Gazetteer* advertised that "The Printer [Eleazer Oswald] respectfully informs the public that he has printed in a *hand-bill* the fourth number of the old whig, as many of his customers were disappointed in receiving that piece owing to the rapid sale of his paper of Saturday [27 October]—The hand-bill is now for sale at the printing office."

"An Old Whig" IV was reprinted in the Philadelphia *Freeman's Journal*, 31 October; *New York Morning Post*, 3 November; Baltimore *Maryland Gazette*, 6 November (excerpt); *Massachusetts Gazette*, 27 November; and *New York Journal*, 8 December. For the entire piece, see CC:202.

For authorship of the "Old Whig" essays, see BoR, II, 35.

. . . The science of politics has very seldom had fair play. So much of passion, interest and temporary prospects of gain are mixed in the pursuit, that a government has been much oftener established, with a view to the particular advantages or necessities of a few individuals, than to the permanent good of society. If the men, who, at different times, have been entrusted to form plans of government for the world, had been really actuated by no other views than a regard to the public good, the condition of human nature in all ages would have been widely different, from that which has been exhibited to us in history. In this country perhaps we are possessed of more than our share of political virtue. If we will exercise a little patience, and bestow our best endeavours on the business, I do not think it impossible, that we may yet form a federal constitution, much superior to any form of government, which has ever existed in the world;—but, whenever this important work shall be accomplished, I venture to pronounce, that it will not be done without a *careful attention to the framing of a bill of rights.*

Much has been said and written, on the subject of a bill of rights;—possibly without sufficient attention to the necessity of conveying distinct and precise ideas of the true meaning of a bill of rights. Your readers, I hope, will excuse me, if I conclude this letter with an attempt to throw some light on this subject.

Men when they enter into society, yield up a part of their natural liberty, for the sake of being protected by government. If they yield up all their natural rights they are absolute slaves to their governors. If they yield up less than is necessary, the government is so feeble, that it cannot protect them.—To yield up so much, as is necessary for the purposes of government; and to retain all beyond what is necessary, is the great point, which ought, if possible, to be attained in the formation of a constitution. At the same time that by these means, the liberty of the subject is secured, the government is really strengthened; because wherever the subject is convinced that nothing more is required from him, than what is necessary for the good of the community, he yields a chearful obedience, which is more useful than the constrained service of slaves.—To define what portion of his natural liberty, the subject shall at all times be entitled to retain, is one great end of a bill of rights. To these may be added in a bill of rights some particular engagements of protection, on the part of government, without such a bill of rights, firmly securing the privileges of the subject, the government is always in danger of degenerating into tyranny; for it is certainly true, that "in establishing the powers of government, the rulers are invested with every right and authority, which is not in explicit terms reserved."[1]—Hence it is, that we find the rulers so often lording over the people at their will and pleasure. Hence it is that we find the patriots, in all ages of the world, so very solicitous to obtain explicit engagements from their rulers, stipulating, expressly, for the preservation of particular rights and privileges.

In different nations, we find different grants or reservations of privileges appealed to in the struggles between the rulers and the people, many of which in the different nations of Europe, have long since been swallowed up and lost by time, or destroyed by the arbitrary hand of power. In England we find the people, with the Barons at their head, exacting a solemn resignation of their rights from king John, in their celebrated *magna charta*, which was many times renewed in Parliament, during the reigns of his successors. The *petition of rights* was afterwards consented to by Charles the first, and contained a declaration of the liberties of the people. The *habeus corpus act*, after the restoration of Charles the Second, *the bill of rights*, which was obtained from the Prince and Princess of Orange on their accession to the throne and the act of settlement [1701], at the accession of the Hanover family, are other instances to shew the care and watchfulness of that nation, to improve every opportunity, of the reign of a weak prince, or the revolution in their government, to obtain the most explicit declarations in favor of their liberties. In like manner the people of this country, at the revo-

lution, having all power in their own hands, in forming the constitutions of the several states, took care to secure themselves by bills of rights, so as to prevent, as far as possible, the encroachments of their future rulers upon the rights of the people. Some of these rights are said to be *unalienable*, such as the rights of conscience: yet even these have been often invaded, where they have not been carefully secured by express and solemn bills and declarations in their favor.

Before we establish a government, whose acts will be THE SUPREME LAW OF THE LAND, and whose power will extend to almost every case without exception, we ought carefully to guard ourselves by a BILL OF RIGHTS, against the invasion of those liberties which it is essential for us to retain, which it is of no real use to government to strip us of; but which in the course of human events have been too often insulted with all the wantonness of an idle barbarity.

1. See James Wilson's 6 October speech to a Philadelphia public meeting (BoR, II, 26).

John De Witt II

Boston American Herald, 29 October 1787 (excerpt)[1]

. . . That the want of a Bill of Rights to accompany this proposed System, is a solid objection to it, provided there is nothing exceptionable in the System itself, I do not assert.—If, however, there is at any time, a propriety in having one, it would not have been amiss here. A people, entering into society, surrender such a part of their natural rights, as shall be necessary for the existence of that society. They are so precious in themselves, that they would never be parted with, did not the preservation of the remainder require it. They are entrusted in the hands of those, who are very willing to receive them, who are naturally fond of exercising of them, and whose passions are always striving to make a bad use of them.—They are conveyed by a written compact, expressing those which are given up, and the mode in which those reserved shall be secured. Language is so easy of explanation, and so difficult is it by words to convey exact ideas, that the party to be governed cannot be too explicit. The line cannot be drawn with too much precision and accuracy. The necessity of this accuracy and this precision encreases in proportion to the greatness of the sacrifice and the numbers who make it.—That a Constitution for the United States does not require a Bill of Rights, when it is considered, that a Constitution for an individual State would, I cannot conceive.—The difference between them is only in the numbers of the parties concerned; they are both a compact between the Governors and Governed, the letter of which must be adhered to in discussing their powers. That which is not expressly granted, is of course retained.

The Compact itself is a recital upon paper of that proportion of the subject's natural rights, intended to be parted with, for the benefit of adverting to it in case of dispute. Miserable indeed would be the situation of those individual States who have not prefixed to their Constitutions a Bill of Rights, if, as a very respectable, learned Gentleman at the Southward observes, "the People, when they established the powers of legislation under their separate Governments, invested their Representatives with every right and authority which they did not, in explicit terms, reserve; and therefore upon every question, respecting the jurisdiction of the House of Assembly, if the Frame of Government is silent, the jurisdiction is efficient and complete."[2] In other words, those powers which the people by their Constitutions expressly give them, they enjoy by positive grant, and those remaining ones, which they never meant to give them, and which the Constitutions say nothing about, they enjoy by tacit implication, so that by one means and by the other, they became possessed of the whole.—This doctrine is but poorly calculated for the meridian of America, where the nature of compact, the mode of construing them, and the principles upon which society is founded, are so accurately known and universally diffused. That insatiable thirst for unconditional controul over our fellow-creatures, and the facility of sounds to convey essentially different ideas, produced the first Bill of Rights ever prefixed to a Frame of Government. The people, altho' fully sensible that they reserved every tittle of power they did not expressly grant away, yet afraid that the words made use of, to express those rights so granted might convey more than they originally intended, they chose at the same moment to express in different language those rights which the agreement did not include, and which they never designed to part with, endeavoring thereby to prevent any cause for future altercation and the intrusion into society of that doctrine of tacit implication which has been the favorite theme of every tyrant from the origin of all governments to the present day. . . .

1. The full essay is printed in RCS:Mass., 156–61. Reprinted: Providence, R.I., *United States Chronicle*, 8 November. For "John De Witt's" first essay, see Boston *American Herald*, 22 October 1787 (RCS:Mass., 109–13).

2. See James Wilson's 6 October speech to a Philadelphia public meeting (BoR, II, 26).

Brutus II
New York Journal, 1 November 1787 (excerpt)

On 1 November Thomas Greenleaf of the *New York Journal* published four items on the Constitution—"Brutus" II and "Cincinnatus" I in his regular newspaper edition, and "Timoleon" and "Centinel" II in an "extraordinary" issue. (Excerpts from the two other original essays immediately follow this essay.

For "Centinel" II, see BoR, II, 60–64.) Each item, at least in part, answered James Wilson's speech of 6 October (BoR, II, 25–28).

"Brutus" II was reprinted in the Boston *Independent Chronicle*, 30 November. For the entire piece, see CC:221. For authorship, see CC:178.

To the CITIZENS *of the* STATE *of* NEW-YORK.

I flatter myself that my last address established this position, that to reduce the Thirteen States into one government, would prove the destruction of your liberties.

But lest this truth should be doubted by some, I will now proceed to consider its merits.

Though it should be admitted, that the argument against reducing all the states into one consolidated government, are not sufficient fully to establish this point; yet they will, at least, justify this conclusion, that in forming a constitution for such a country, great care should be taken to limit and define its powers, adjust its parts, and guard against an abuse of authority. How far attention has been paid to these objects, shall be the subject of future enquiry. When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance, is designed not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made—But on this subject there is almost an entire silence.

If we may collect the sentiments of the people of America, from their own most solemn declarations, they hold this truth as self evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society then is to be sought, not in any natural right which one man has to exercise authority over another, but in the united consent of those who associate. The mutual wants of men, at first dictated the propriety of forming societies; and when they were established, protection and defence pointed out the necessity of instituting government. In a state of nature every individual pursues his own interest; in this pursuit it frequently happened, that the possessions or enjoyments of one were sacrificed to the views and designs of another; thus the weak were a prey to the strong, the simple and unwary were subject to impositions from those who were more crafty and designing. In this state of things, every individual was insecure; common interest therefore directed, that government should be established, in which the force of the whole community should be collected, and under such directions, as to protect and defend every one

who composed it. The common good, therefore, is the end of civil government, and common consent, the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order, that what remained should be preserved: how great a proportion of natural freedom is necessary to be yielded by individuals, when they submit to government, I shall not now enquire. So much, however, must be given up, as will be sufficient to enable those, to whom the administration of the government is committed, to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose, that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, &c. Others are not necessary to be resigned, in order to attain the end for which government is instituted, these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good. From these observations it appears, that in forming a government on its true principles, the foundation should be laid in the manner I before stated, by expressly reserving to the people such of their essential natural rights, as are not necessary to be parted with. The same reasons which at first induced mankind to associate and institute government, will operate to influence them to observe this precaution. If they had been disposed to conform themselves to the rule of immutable righteousness, government would not have been requisite. It was because one part exercised fraud, oppression, and violence on the other, that men came together, and agreed that certain rules should be formed, to regulate the conduct of all, and the power of the whole community lodged in the hands of rulers to enforce an obedience to them. But rulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes, and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another. It is therefore as proper that bounds should be set to their authority, as that government should have at first been instituted to restrain private injuries.

This principle, which seems so evidently founded in the reason and nature of things, is confirmed by universal experience. Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers. The country from which we have

derived our origin, is an eminent example of this. Their magna charta and bill of rights have long been the boast, as well as the security, of that nation. I need say no more, I presume, to an American, than, that this principle is a fundamental one, in all the constitutions of our own states; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them. From this it appears, that at a time when the pults of liberty beat high and when an appeal was made to the people to form constitutions for the government of themselves, it was their universal sense, that such declarations should make a part of their frames of government. It is therefore the more astonishing, that this grand security, to the rights of the people, is not to be found in this constitution.

It has been said, in answer to this objection, that such declaration of rights, however requisite they might be in the constitutions of the states, are not necessary in the general constitution, because, "in the former case, every thing which is not reserved is given, but in the latter the reverse of the proposition prevails, and every thing which is not given is reserved."[1] It requires but little attention to discover, that this mode of reasoning is rather specious than solid. The powers, rights, and authority, granted to the general government by this constitution, are as complete, with respect to every object to which they extend, as that of any state government—It reaches to every thing which concerns human happiness—Life, liberty, and property, are under its controul. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits, as in that of the state governments. To set this matter in a clear light, permit me to instance some of the articles of the bills of rights of the individual states, and apply them to the case in question.

For the security of life, in criminal prosecutions, the bills of rights of most of the states have declared, that no man shall be held to answer for a crime until he is made fully acquainted with the charge brought against him; he shall not be compelled to accuse, or furnish evidence against himself—The witnesses against him shall be brought face to face, and he shall be fully heard by himself or counsel. That it is essential to the security of life and liberty, that trial of facts be in the vicinity where they happen. Are not provisions of this kind as necessary in the general government, as in that of a particular state? The powers vested in the new Congress extend in many cases to life; they are authorised to provide for the punishment of a variety of capital crimes, and no restraint is laid upon them in its exercise, save only, that "the trial of all crimes, except in cases of impeachment, shall be by jury; and such

trial shall be in the state where the said crimes shall have been committed.'' No man is secure of a trial in the county where he is charged to have committed a crime; he may be brought from Niagara to New-York, or carried from Kentucky to Richmond for trial for an offence, supposed to be committed. What security is there, that a man shall be furnished with a full and plain description of the charges against him? That he shall be allowed to produce all proof he can in his favor? That he shall see the witnesses against him face to face, or that he shall be fully heard in his own defence by himself or counsel?

For the security of liberty it has been declared, ''that excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted—That all warrants, without oath or affirmation, to search suspected places, or seize any person, his papers or property, are grievous and oppressive.''

These provisions are as necessary under the general government as under that of the individual states; for the power of the former is as complete to the purpose of requiring bail, imposing fines, inflicting punishments, granting search warrants, and seizing persons, papers, or property, in certain cases, as the other.

For the purpose of securing the property of the citizens, it is declared by all the states, ''that in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.''

Does not the same necessity exist of reserving this right, under this national compact, as in that of this state? Yet nothing is said respecting it. In the bills of rights of the states it is declared, that a well regulated militia is the proper and natural defence of a free government—That as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to, and controuled by the civil power.

The same security is as necessary in this constitution, and much more so; for the general government will have the sole power to raise and to pay armies, and are under no controul in the exercise of it; yet nothing of this is to be found in this new system.

I might proceed to instance a number of other rights, which were as necessary to be reserved, such as, that elections should be free, that the liberty of the press should be held sacred; but the instances adduced, are sufficient to prove, that this argument is without foundation.—Besides, it is evident, that the reason here assigned was not the true one, why the framers of this constitution omitted a bill of rights; if it had been, they would not have made certain reservations, while they totally omitted others of more importance. We find they have, in

the 9th section of the 1st article, declared, that the writ of habeas corpus shall not be suspended, unless in cases of rebellion—that no bill of attainder, or expost facto law, shall be passed—that no title of nobility shall be granted by the United States, &c. If every thing which is not given is reserved, what propriety is there in these exceptions? Does this constitution any where grant the power of suspending the habeas corpus, to make expost facto laws, pass bills of attainder, or grant titles of nobility? It certainly does not in express terms. The only answer that can be given is, that these are implied in the general powers granted. With equal truth it may be said, that all the powers, which the bills of right, guard against the abuse of, are contained or implied in the general ones granted by this constitution.

So far it is from being true, that a bill of rights is less necessary in the general constitution than in those of the states, the contrary is evidently the fact.—This system, if it is possible for the people of America to accede to it, will be an original compact; and being the last, will, in the nature of things, vacate every former agreement inconsistent with it. For it being a plan of government received and ratified by the whole people, all other forms, which are in existence at the time of its adoption, must yield to it. This is expressed in positive and unequivocal terms, in the 6th article, ''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.'' . . .

1. Quoted from James Wilson's speech of 6 October 1787 (BoR, II, 26).

Cincinnatus I: To James Wilson, Esquire
New York Journal, 1 November 1787 (excerpt)[1]

Six essays signed ''Cincinnatus'' and addressed to ''James Wilson, Esquire'' were published in the *New York Journal* between 1 November and 6 December 1787. The essays answered Wilson's speech of 6 October (BoR, II, 25–28). The ''Cincinnatus'' essays were not widely reprinted, although each essay appeared in Philadelphia. The few remaining reprints were scattered among five New England towns. See footnote 1 (below).

Some contemporaries attributed the essays to Richard Henry Lee, others to his brother Arthur. On 21 November the *Pennsylvania Gazette* printed an ''*Extract of a letter*'' stating that ''R——d H—y L–e passed through this town [Wilmington, Del.] a few days ago, on his way to Virginia. He spent a whole evening in reading his Cincinnatusses, and in abusing Mr. Wilson and the new government'' (CC:280). The next day, William Shippen, Jr. wrote his son in

London that "Brutus said to be by R. H. Lee or Jay, Cincinnatus by A Lee" (RCS:Pa., 288). Shippen was a brother-in-law of the Lees. In May 1788 William Short, in Paris, declared that he had learned from John Paradise that Arthur Lee was the author of the "Cincinnatus" essays (to Thomas Lee Shippen, 31 May 1788, RCS:Va., 896). Paradise, who lived in London, England, was related to the Lees through marriage.

The "Cincinnatus" essays evoked few public responses. The principal criticism was a point-by-point rebuttal by "Anti-Cincinnatus" in the Northampton, Mass., *Hampshire Gazette* of 19 December (CC:354). For other attacks, see "A Lunarian" and "A Citizen of America," New York *Daily Advertiser*, 20 December 1787 and 19 February 1788 (RCS:N.Y., 445–47 and 787–90); and "Gomez," *Pennsylvania Gazette*, 26 December 1787 (RCS:Pa. Supplement, 752). For a defense of the essays, see "Centinel" XIV, Philadelphia *Independent Gazetteer*, 5 February 1788 (CC:501). In addition to defending the essays, "Centinel" accused Federalists in the post office of trying to prevent the republication of some of the "Cincinnatus" essays outside of New York City, especially in Philadelphia while the Pennsylvania Convention was in session.

> MR. GREENLEAF, A speech made to the citizens of Philadelphia, and said to be by Mr. WILSON, appears to me to abound with sophistry, so dangerous, as to require refutation. If we adopt the new Constitution, let us at least understand it. Whether it deserves adoption or not, we can only determine by a full examination of it, so as clearly to discern what it is that we are so loudly, I had almost said, indecently called upon to receive. Such an examination is the object of the papers which I am to entreat you to lay before the public, in answer to Mr. Wilson, and under the signature of—Cincinnatus.

Sir, You have had the graciousness, Sir, to come forward as the defender and panegyrist of the plan of a new Constitution, of which you was one of the framers. If the defence you have thought proper to set up, and the explanations you have been pleased to give, should be found, upon a full and fair examination, to be fallacious or inadequate; I am not without hope, that candor, of which no gentleman talks more, will render you a convert to the opinion, that some material parts of the proposed Constitution are so constructed—that a *monstrous aristocracy springing from it, must necessarily swallow up the democratic rights of the union, and sacrifice the liberties of the people to the power and domination of a few.*

If your defence of this new plan of power, has, as you say, been matured by four months constant meditation upon it, and is yet so very weak, as I trust will appear, men will begin to think, that—the thing itself is indefensible. Upon a subject so momentous, the public has a

right to the sentiments of every individual that will reason: I therefore do not think any apology necessary for appearing in print; and I hope to avoid, at least, the indiscriminate censure which you have, with so much candor and liberality, thrown on those who will not worship *your idol*—"that they are industriously endeavouring to prevent and destroy it, by insidious and clandestine attempts." Give me leave just to suggest, that perhaps these clandestine attempts might have been owing to the terror of *your mob*, which so nobly endeavoured to prevent all freedom of action and of speech.[2] The *reptile Doctor* who was employed to blow the trumpet of persecution, would have answered the public reasoning of an opponent, by hounding on him the rage of a deluded populace.[3]

It was to such men, and under such impressions, that you made the speech which I am now to examine; no wonder then that it was received with loud and unanimous testamonies of their approbation. They were vociferating through you the panegyric of their own intemperate opinions.

Your first attempt is to apologize for so very obvious a defect as—the omission of a declaration of rights. This apology consists in a very ingenious discovery; that in the state constitutions, whatever is not reserved is given; but in the congressional constitution, whatever is not given, is reserved. This has more the quaintness of a conundrum, than the dignity of an argument. The conventions that made the state and the general constitutions, sprang from the same source, were delegated for the same purpose—that is, for framing rules by which we should be governed, and ascertaining those powers which it was necessary to vest in our rulers. Where then is this distinction to be found, but in your assumption? Is it in the powers given to the members of convention? no—Is it in the constitution? not a word of it:—And yet on this play of words, this dictum of yours, this distinction without a difference, you would persuade us to rest our most essential rights. I trust, however, that the good sense of this free people cannot be so easily imposed on by professional figments. The confederation, in its very outset, declares—that what is not expressly given, is reserved.[4] This constitution makes no such reservation. The presumption therefore is, that the framers of the proposed constitution, did not mean to subject it to the same exception.

You instance, Sir, the liberty of the press; which you would persuade us, is in no danger, though not secured, because there is no express power granted to regulate literary publications. But you surely know, Sir, that where general powers are expressly granted, the particular ones comprehended within them, must also be granted. For instance, the proposed Congress are empowered—to define and punish offences

against the law of nations—mark well, Sir, if you please—to *define* and punish. Will you, will any one say, can any one even think that does not comprehend a power to define and declare all publications from the press against the conduct of government, in making treaties, or in any other foreign transactions, an offence against the law of nations? If there should ever be an influential president, or arbitrary senate, who do not choose that their transactions with foreign powers should be discussed or examined in the public prints, they will easily find pretexts to prevail upon the other branch to concur with them, in restraining what it may please them to call—the licentiousness of the press. And this may be, even without the concurrence of the representative of the people; because the president and senate are empowered to make treaties, and these treaties are declared the supreme law of the land.

What use they will make of this power, is not now the question. Certain it is, that such power is given, and that power is not restrained by any declaration—that the liberty of the press, which even you term, the sacred palladium of national freedom, shall be forever free and inviolable. I have proved that the power of restraining the press, is necessarily involved in the unlimited power of defining offences, or of making treaties, which are to be the supreme law of the land. You acknowledge, that it is not expressly excepted, and consequently it is at the mercy of the powers to be created by this constitution.

Let us suppose then, that what has happened, may happen again: That a patriotic printer, like Peter Zenger,[5] should incur the resentment of our new rulers, by publishing to the world, transactions which they wish to conceal. If he should be prosecuted, if his judges should be as desirous of punishing him, *at all events*, as the judges were to punish Peter Zenger, what would his innocence or his virtue avail him? This constitution is so admirably framed for tyranny, that, by clear construction, the judges might put the verdict of a jury out of the question. Among the cases in which the court is to have appellate jurisdiction, are—controversies, to which the United States are a party:—In this appellate jurisdiction, the judges are to determine, *both law and fact*. That is, the court is both judge and jury. The attorney general then would have only to move a question of law in the court below, to ground an appeal to the supreme judicature, and the printer would be delivered up to the mercy of his judges. Peter Zenger's case will teach us, what mercy he might expect. Thus, if the president, vice-president, or any officer, or favorite of state, should be censured in print, he might effectually deprive the printer, or author, of his trial by jury, and subject him to something, that will probably very much resemble the—Star

Chamber of former times. The freedom of the press, the sacred palladium of public liberty, would be pulled down;—all useful knowledge on the conduct of government would be withheld from the people—the press would become subservient to the purposes of bad and arbitrary rulers, and imposition, not information, would be its object.

The printers would do well, to publish the proceedings of the judges, in Peter Zenger's case—they would do well to publish lord Mansfield's conduct in, the King against Woodfall;[6]—that the public mind may be properly warned of the consequences of agreeing to a constitution, which provides no security for the freedom of the press, and leaves it controversial at least—whether in matter of libels against any of our intended rulers; the printer would even have the security of trial by jury. Yet it was the jury only, that saved Zenger, it was a jury only, that saved Woodfall, it can only be a jury that will save any future printer from the fangs of power.

Had you, Mr. Wilson, who are so unmerciful against what you are pleased to call, the disingenuous conduct of those who dislike the constitution; had you been ingenuous enough to have stated this fairly to our fellow citizens; had you said to them—gentlemen, it is true, that the freedom of the press is not provided for; it is true, that it may be restrained at pleasure, by our proposed rulers; it is true, that a printer sued for a libel, would not be tried by a jury; all this is true, nay, worse than this is also true; but then it is all necessary to what I think, *the best form of government that has ever been offered the world. . . .*

1. Reprinted: *Massachusetts Gazette*, 16 November; Philadelphia *Independent Gazetteer*, 16 November; *Vermont Gazette*, 26 November; Northampton, Mass., *Hampshire Gazette*, 5 December; and Rhode Island *Providence Gazette*, 8 December. For the entire piece, see CC:222.

2. For the use of a mob by Federalists in Philadelphia, see CC:125.

3. "The *reptile Doctor*" was probably Benjamin Rush. Early in 1788 Rush came under even greater attack for his alleged activities as a propagandist. In January a writer claimed that Rush "has become editor of *one* of the newspapers, and is employed in writing paragraphs and extracts of letters, shewing the situation of politics in the other states, &c. and for the use of the newspapers in the United States" (Philadelphia *Independent Gazetteer*, 3 January, RCS:Pa. Supplement, 769). A month later someone charged that Rush, in order "to *save his bacon*," had become "the *humble* copyist" of the publisher of the *Pennsylvania Mercury* (Philadelphia *Independent Gazetteer*, 19 February, RCS:Pa. Supplement, 901–2). In the early months of 1788 the *Mercury* was one of the most partisan Federalist newspapers in the United States.

4. Article II of the Articles of Confederation (CDR, 86).

5. For Zenger, see footnote 1 to "A Democratic Federalist," *Pennsylvania Herald*, 17 October (BoR, II, 45).

6. For *Rex* v. *Woodfall*, see Richard Henry Lee to Samuel Adams, 5 October, note 4 (BoR, II, 20).

Timoleon

New York Journal, 1 November 1787 (extraordinary) (excerpts)[1]

On 25 October Thomas Greenleaf of the *New York Journal* announced that he had received "Timoleon" but for "Want of room" he was postponing its publication "until next week." On 1 November Greenleaf printed "Timoleon" in an extra two-page issue because his regular issue was filled. This "extraordinary" issue was composed entirely of two essays—"Centinel" II and "Timoleon."

Shortly after the appearance of the "extraordinary" issue, Greenleaf reprinted "Timoleon" and "Centinel" I and II (BoR, II, 25, 60–64) as a two-page broadside. The broadside circulated throughout the Hudson River Valley, as far north as Albany and Lansingburgh. New York Antifederalists also sent hundreds of the broadsides into Connecticut, an action widely condemned by Connecticut Federalists (*New Haven Gazette*, 22 November and 13 December, CC:283–A and C; and RCS:Conn., 330, 458, 470–71, 495–96, 507, 514).

MR. GREENLEAF, I was lately invited to pass the evening with a club of grave and sensible men, who are in the practice of assembling weekly to converse on public affairs . . .

After some judicious reflections on this subject, which tended to shew the necessity of the most plain and unequivocal language in the all important business of constituting government, which necessarily conveying great powers, is always liable (from the natural tendency of power to corrupt the human heart and deprave the head) to great abuse; by perverse and subtle arguments calculated to extend dominion over all things and all men. One of the club supposed the following case:—A gentleman, *in the line of his profession* is appointed a *judge* of the supreme court under the new Constitution, and the *rulers*, finding that the rights of conscience and the freedom of the press were exercised in such a manner, by *preaching* and *printing* as to be troublesome to the new government—which event would probably happen, if the rulers finding themselves possessed of great power, should so use it as to oppress and injure the community.—In this state of things the *judge* is called upon, *in the line of his profession*, to give his opinion—whether the *new Constitution* admitted of a legislative act to *suppress the rights of conscience*, and *violate the liberty of the press?* The answer of the learned *judge* is conceived in didactic mode, and expressed in learned phrase; thus,—In the 8th section of the first article of the *new Constitution*, the Congress have power given *to lay and collect taxes for the general welfare of the United States*. By this power, the right of taxing is co-extensive with the *general welfare*, and the *general welfare* is as unlimitted as actions and things are that may disturb or benefit that general welfare. A right being given to *tax* for the general welfare, necessarily includes the right

of judging what is for the general welfare, and a right of judging what is for the general welfare, as *necessarily* includes a power of protecting, defending, and promoting it by all such laws and means as are fitted to that end; for, qui dat finem dat media ad finem necessaria, who gives the end gives the means necessary to obtain the end. The Constitution must be so construed as not to involve an absurdity, which would clearly follow from allowing the end and denying the means. A right of *taxing* for the general welfare being the highest and most important mode of providing for it, cannot be supposed to exclude inferior modes of effecting the same purpose, because the rule of law is, that, omne majus continct in se minus.[2]

From hence it clearly results, that, if *preachers* and *printers* are troublesome to the new government; and that in the opinion of its rulers, it shall be for the general welfare to restrain or suppress both the one and the other, it may be done consistently with the new Constitution. And that this was the opinion of the community when they consented to it, is evident from this consideration; that although the all comprehending power of the new legislature is fixed, by its acts being made the *supreme law* of the land, any thing in the *Constitutions* or laws of any state to the contrary notwithstanding: Yet no *express* declaration in favor of the *rights of conscience* or *liberty* of the *press* is to be found in the new Constitution, as we see was carefully done in the *Constitutions* of the states composing this union—Shewing clearly, that what was then thought necessary to be specially reserved from the pleasure of power, is *now* designed to be yielded to its will.

A grave old gentleman of the club, who had sat with his head reclined on his hand, listening in pensive mood to the argument of the *judge*, said, "I verily believe, that neither the logic or the law of that opinion will be hereafter doubted by the professors of power, who, through the history of human nature, have been for enlarging the sphere of their authority. And thus the dearest rights of men and the best security of civil liberty may be sacrificed by the sophism of a lawyer, who, Carneades like, can to day shew that to be necessary, before the people, which to-morrow he can likewise shew to be unnecessary and useless—For which reason the sagacious Cato advised, that such a man should immediately be sent from the city, as a person dangerous to the morals of the people and to society."[3] The old gentleman continued, "I now plainly see the necessity of express declarations and reservations in favor of the great, unalienable rights of mankind, to prevent the oppressive and wicked extention of power to the ruin of human liberty. For the opinion above stated, absolutely refutes the sophistry of 'that being retained which is not given,' where the words conveying power

admit of the most extensive construction that language can reach to, or the mind conceive, as is the case in this new Constitution. By which we have already seen how logically it may be proved, that both *religion* and the *press* can be made to bend before the views of power. With as little ceremony, and similar constructive doctrine, the inestimable trial by jury can likewise be depraved and destroyed—because the Constitution in the 2d section of the 3d article, by expressly assuming the trial by jury in *criminal cases*, and being silent about it in *civil causes*, evidently declares it to be unnecessary in the latter. And more strongly so, by giving the supreme court jurisdiction in appeals, '*both as to law and fact*.' If to this be added, that the trial by jury in criminal cases is only stipulated to be '*in the state*,' not in the county where the crime is supposed to have been committed; one excellent part of the jury trial, from the vicinage, or at least from the county, is even in criminal cases rendered precarious, and at the mercy of rulers under the new Constitution.—Yet the danger to liberty, peace, and property, from restraining and injuring this excellent mode of trial, will clearly appear from the following observations of the learned Dr. Blackstone, in his commentaries on the laws of England, Art. Jury Trial Book 3. chap. 33.—'The establishment of jury trial was always so highly esteemed and valued by the people, that no conquest, *no change of government*, could ever prevail to abolish it. In magna charta it is more than once insisted upon *as the principal bulwark of our liberties*—And this is a species of knowledge most absolutely necessary for every gentleman; as well, because he may be frequently called upon to determine in this capacity the rights of others, his fellow subjects; as, *because his own property, his liberty, and his life, depend upon maintaining in its legal force the trial by jury*—In settling and adjusting a question of fact, when intrusted to any single magistrate, partiality and injustice have an ample field to range in; either by boldly asserting that to be proved which is not so, or by more artfully suppressing some circumstances, stretching and warping others, and distinguishing away the remainder. Here therefore a competent number of sensible and upright jurymen, *chosen from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice*. For the most powerful individual in the state will be cautious of committing any flagrant invasion of anothers right, when he knows that the *fact* of his oppression must be examined and decided by twelve indifferent men, not appointed until the hour of trial; and that when once the *fact* is ascertained, *the law must*, of course, redress it. *This, therefore, preserves in the hands of the people that share, which they ought to have* in the administration of public justice, *and prevents the encroachments of the more powerful and wealthy citizens. Every new tribunal,*

erected for the decision of facts, without the intervention of a jury (whether composed of justices of the peace, commissioners of the revenue, judges of a court of conscience, or any other standing magistrates) *is a step towards establishing aristocracy, the most oppressive of absolute governments.* And in every country as the trial by jury has been *gradually disused*, so the great have increased in power, until the state has been torn to pieces by rival factions, and oligarchy in effect has been established, though under the shadow of regal government; unless where the miserable people have taken shelter under absolute monarchy, as the lighter evil of the two. And, particularly, it is worthy of observation, that in Sweden the trial by jury, that bulwark of liberty, continued long in its full force, but is now fallen into disuse; and that there, though the regal power is in no country so closely limitted, yet the liberties of the commons are extinguished, and the government is degenerated into a mere aristocracy. *It is therefore upon the whole, a duty which every man owes to his country, his friends, his posterity, and himself, to maintain, to the utmost of his power, this valuable trial by jury in all its rights.*' "[4] Thus far the learned Dr. Blackstone.—"Could the Doctor, if he were here, at this moment," continued the old gentleman, "have condemned those parts of the new Constitution in stronger terms, which give the supreme court jurisdiction both as to law and *fact*; and which have weakened the jury trial in criminal cases, and which have discountenanced it in all civil causes? At first I wondered at the complaint that some people made of this new Constitution, because it led to the government of a few; but it is fairly to be concluded, from this injury to the trial by jury, that *some* who framed this new system, saw with Dr. Blackstone, how operative jury trial was in preventing the tyranny of the great ones, and therefore frowned upon it, as this new Constitution does. But we may hope that our fellow citizens will not approve of this new plan of government, before they have well considered it, and that they will insist on such amendments to it, as will secure from violation the just rights and liberty of the people." The club listened, with great attention, to the worthy old gentleman, and joined him in hearty wishes, that the people may be upon their guard, and not suffer themselves to be deprived of liberty, under the notion of strong federal government—because the design of all government should be the happiness of the people, and it is not necessary for the purpose of securing happiness, that power should be given rulers to destroy happiness. I was an attentive hearer, Mr. Greenleaf, of what passed in this honest club, and I have given it to you as nearly as my memory (which is not a bad one) enables me to do. I confess to you, that I felt my mind much informed upon this all important business, the new Constitution, which, when

first I saw it, and hastily read it, I found my imagination quickly taken with the good parts of it, and so passed over those great and fundamental errors, which, if agreed to, must inevitably convert the people of this free country into hewers of wood and drawers of water[5] for the few great ones, into whose hands all power will be thereby unwarily delivered.

New York, October 24, 1787.

1. For the entire piece, see CC:223.

2. Latin: "Every greater contains in itself the less." In law: A greater charge includes any lesser offenses.

3. Carneades of Cyrene (214–129 B.C.), a philosopher noted for his dialectical and rhetorical abilities, was famous for his method of arguing for and against any given point of view. The Athenians sent him and several others on an embassy to Rome, where Carneades so captivated the youth of Rome with his method that Cato the Censor (234–149 B.C.) demanded that Carneades and the others leave Rome immediately for fear that Carneades would corrupt Roman Youth.

4. Blackstone, *Commentaries*, Book III, chapter 23, pp. 350–51, 380–81.

5. Joshua, 9:21, 23, 27.

An Old Whig V
Philadelphia Independent Gazetteer, 1 November 1787 (excerpt)[1]

MR. PRINTER, In order that people may be sufficiently impressed, with the necessity of establishing a BILL OF RIGHTS in the forming of a new constitution, it is very proper to take a short view of some of those liberties, which it is of the greatest importance for Freemen to retain to themselves, when they surrender up a part of their natural rights for the good of society.

The first of these, which it is of the utmost importance for the people to retain to themselves, which indeed they have not even the right to surrender, and which at the same time it is of no kind of advantages to government to strip them of, is the LIBERTY OF CONSCIENCE. I know that a ready answer is at hand, to any objections upon this head. We shall be told that in this enlightened age, the rights of conscience are perfectly secure: There is no necessity of guarding them; for no man has the remotest thoughts of invading them. If this be the case, I beg leave to reply that now is the very time to secure them.—Wise and prudent men always take care to guard against danger beforehand, and to make themselves safe whilst it is yet in their power to do it without inconvenience or risk.—who shall answer for the ebbings and flowings of opinion, or be able to say what will be the fashionable frenzy of the next generation? It would have been treated as a very ridiculous supposition, a year ago, that the charge of witchcraft would cost a person her life in the city of Philadelphia; yet the fate of the unhappy old

woman called *Corbmaker*, who was beaten—repeatedly wounded with knives—mangled and at last killed in our streets, in obedience to the commandment which requires "that we shall not suffer a witch to live," without a possibility of punishing or even of detecting the authors of this inhuman folly, should be an example to warn us how little we ought to trust to the unrestrained discretion of human nature.[2]

Uniformity of opinion in science, morality, politics or religion, is undoubtedly a very great happiness to mankind; and there have not been wanting zealous champions in every age, to promote the means of securing so invaluable a blessing. If in America we have not lighted up fires to consume Heretics in religion, if we have not persecuted unbelievers to promote the unity of the faith, in matters which pertain to our final salvation in a future world, I think we have all of us been witness to something very like the same spirit, in matters which are supposed to regard our political salvation in this world. In Boston it seems at this very moment, that no man is permitted to publish a doubt of the infalibility of the late convention, without giving up his name to the people, that he may be delivered over to speedy destruction;[3] and it is but a short time since the case was little better in this city. Now this is a portion of the very same spirit, which has so often kindled the fires of the inquisition: and the same Zealot who would hunt a man down for a difference of opinion upon a political question which is the subject of public enquiry, if he should happen to be fired with zeal for a particular species of religion, would be equally intolerant. The fact is, that human nature is still the same that ever it was: the fashion indeed changes; but the seeds of superstition, bigotry and enthusiasm, are too deeply implanted in our minds, ever to be eradicated; and fifty years hence, the French may renew the persecution of the Huguenots, whilst the Spaniards in their turn may become indifferent to their forms of religion. They are idiots who trust their future security to the whim of the present hour. One extreme is always apt to produce the contrary, and those countries, which are now the most lax in their religious notions, may in a few years become the most rigid, just as the people of this country from not being able to bear any continental government at all, are now flying into the opposite extreme of surrendering up all the powers of the different states, to one continental government.

The more I reflect upon the history of mankind, the more I am disposed to think that it is our duty to secure the essential rights of the people, by every precaution; for not an avenue has been left unguarded, through which oppression could possibly enter in any government; without some enemy of the public peace and happiness improv-

ing the opportunity to break in upon the liberties of the people; and none have been more frequently successful in the attempt, than those who have covered their ambitious designs under the garb of a fiery zeal for religious orthodoxy. What has happened in other countries and in other ages, may very possibly happen again in our own country, and for aught we know, before the present generation quits the stage of life. We ought therefore in a *bill of rights* to secure, in the first place, by the most express stipulations, the sacred rights of conscience. Has this been done in the constitution, which is now proposed for the consideration of the people of this country?—Not a word on this subject has been mentioned in any part of it; but we are left in this important article, as well as many others, entirely to the mercy of our future rulers.

But supposing our future rulers to be wicked enough to attempt to invade the rights of conscience; I may be asked how will they be able to effect so horrible a design? I will tell you my friends—*The unlimited power of taxation* will give them the command of all the treasures of the continent; *a standing army* will be wholly at their devotion, and the authority which is given them over the *militia*, by virtue of which they may, if they please, change all the officers of the militia on the continent in one day, and put in new officers whom they can better trust; by which they can subject all the militia to strict military laws, and punish the disobedient with death, or otherwise, as they shall think right: by which they can march the militia back and forward from one end of the continent to the other, at their discretion; these powers, if they should ever fall into bad hands, may be abused to the worst of purposes. Let us instance one thing arising from this right of organizing and governing the militia. Suppose a man alledges that he is conscientiously scrupulous of bearing Arms.—By the bill of rights of Pennsylvania he is bound only to pay an equivalent for his personal service.[4]—What is there in the new proposed constitution to prevent his being dragged like a Prussian soldier to the camp and there compelled to bear arms?—This will depend wholly upon the wisdom and discretion of the future legislature of the continent in the framing their militia laws; and I have lived long enough to hear the practice *of commuting personal service for a paltry fine* in time of war and foreign invasion most severely reprobated by some persons who ought to have judged more rightly on the subject—Such flagrant oppressions as these I dare say will not happen at the beginning of the new government; probably not till the powers of government shall be firmly fixed; but it is a duty we owe to ourselves and our posterity if possible to prevent their ever happening. I hope and trust that there are few persons at present hardy enough to entertain thoughts of creating any religious establishment

for this country; although I have lately read a piece in the newspaper, which speaks of *religious* as well as civil and military *offices*, as being hereafter to be disposed of by the new government; but if a majority of the continental legislature should at any time think fit to establish a form of religion, for the good people of this continent, with all the pains and penalties which in other countries are annexed to the establishment of a national church, what is there in the proposed constitution to hinder their doing so? Nothing; for we have no bill of rights, and every thing therefore is in their power and at their discretion. And at whose discretion? We know not any more than we know the fates of those generations which are yet unborn.

It is needless to repeat the necessity of securing other personal rights in the forming a new government. The same argument which proves the necessity of securing one of them shews also the necessity of securing others. Without a bill of rights we are totally insecure in all of them; and no man can promise himself with any degree of certainty that his posterity will enjoy the inestimable blessings of liberty of conscience, of freedom of speech and of writing and publishing their thoughts on public matters, of trial by jury, of holding themselves, their houses and papers free from seizure and search upon general suspicion or general warrants; or in short that they will be secured in the enjoyment of life, liberty and property without depending on the will and pleasure of their rulers. . . .

1. Reprinted: *New York Morning Post*, 10 November, and *New York Journal*, 11 December. It was also printed as a broadside by Eleazer Oswald of the *Independent Gazetteer*. For the entire essay, see CC:224. For authorship, see BoR, II, 35.

2. On 10 July 1787 an old woman, "under the imputation of being *a witch*," was "carted through several of the streets" of Philadelphia "and was hooted and pelted as she passed along" (*Independent Gazetteer*, 16 July). On 18 July the woman died as a result of this "barbarous treatment" (Philadelphia *Freeman's Journal*, 25 July).

3. For the Boston press and the Constitution, see CC:131.

4. See Section 8, BoR, I, 95.

"M."

New Hampshire Spy, 3 November 1787 (excerpt)[1]

On the new Federal Constitution:

. . . An objection, it is true, has been made by some to the proposed constitution, that the trial by jury is not secured in civil causes. We would observe, it is not prohibited, and would further enquire, if the only danger of court influence in judges is not confined to criminal causes. It has also been objected that nothing is said about the liberty of the press in the constitution. It surely could not be the intention of

convention to restrain it. And probably it was considered as unnecessary to provide for that, as for our breathing: the former as necessarily resulting from a free constitution, as the latter from the enjoyment of life.—Indeed when we consider this proposed constitution in all its parts, we can hardly help comparing the future situation of America, to that of the righteous, after the great day of judgment, when the son shall deliver up his power to the father; and he shall be all in all.[2]

1. Reprinted: *Massachusetts Gazette*, 9 November. For the full essay, see RCS:N.H., 37–39.

2. 1 Corinthians 15:28. "And when all things shall be subdued unto him, then shall the Son also himself be subject unto him that put all things under him, that God may be all in all."

Archibald Stuart to John Breckinridge
Richmond, Va., 6 November 1787 (excerpt)[1]

. . . to talk of amending it is a mere farce the Dift States would amend it so as to suit themselves respectively when these amendments would be proposed to a general Convention the Deputies knowing the Views of their Constituents would respectively become more tenacious of their ~~respective~~ local interests & perhaps the spirit of accommodation be so far lost as to render our destruction as a Confederacy inevitable. . . .

1. RC, Breckinridge Family Papers, DLC. For longer excerpts from this letter, see RCS: Va., 564–65, 569n.

An Officer of the Late Continental Army
Philadelphia Independent Gazetteer, 6 November 1787 (excerpts)[1]

Friends, Countrymen, Brethren, and Fellow Citizens:

. . . With a heart full of anxiety for the preservation of your dearest rights, I presume to address you on this important occasion—In the name of sacred liberty, dearer to us than our property and our lives, I request your most earnest attention. . . .

2. The powers of Congress extend to the *lives*, the *liberties* and the *property* of every citizen. . . .

8. trial by jury, that sacred bulwark of liberty, is ABOLISHED IN CIVIL CASES, and Mr. [James] W[ilson], one of the Convention, has told you, that not being able to agree as to the FORM of establishing this point, they have left you deprived of the SUBSTANCE. Here are his own words—*The subject was involved in difficulties. The Convention found the task* TOO DIFFICULT *for them, and left the business as it stands.*[2]

9. the liberty of the press is not secured, and the powers of congress are fully adequate to its destruction, as they are to have the trial *of libels*, or *pretended libels* against the United States, and may by a cursed abominable STAMP ACT (as the *Bowdoin administration* has done in Massachusetts) preclude you effectually from all means of information.[3] *Mr. W[ilson] has given you no answer to these arguments.*

10. Congress have the power of keeping up a STANDING ARMY in time of peace, and Mr. W[ilson] has told you THAT IT WAS NECESSARY. . . .

21. The MILITIA is to be under the immediate command of congress, and men *conscientiously scrupulous of bearing arms,* may be compelled to perform military duty. . . .

These, my countrymen, are the objections that have been made to the new proposed system of government; and if you read the system itself with attention, you will find them all to be founded in truth. But what have you been told in answer?

I pass over the sophistry of Mr. W[ilson], in his equivocal speech at the state house. His pretended arguments have been echoed and reechoed by every retailer of politics, and *victoriously* refuted by several patriotic pens. Indeed if you read this famous speech in a cool dispassionate moment, you will find it to contain no more than a train of pitiful sophistry and evasions, unworthy of the man who spoke them. I have taken notice of some of them in stating the objections, and they must, I am sure, have excited your *pity* and *indignation.* Mr. W[ilson] is a man of sense, learning and extensive information, unfortunately for him he has never sought the more solid fame of *patriotism.* During the late war he narrowly escaped the effects of popular rage, and the people seldom arm themselves against a citizen in vain.[4] The whole tenor of his political conduct has always been strongly tainted with the spirit of *high aristocracy,* he has never been known to join in a truly popular measure, and his talents have ever been devoted to the patrician interest. His lofty carriage indicates the lofty mind that animates him, a mind able to conceive and perform great things, but which unfortunately can see nothing great out of the pale of power and worldly grandeur; despising what he calls the inferior order of the people, popular liberty and popular assemblies offer to his exalted imagination an idea of meanness and contemptibility which he hardly seeks to conceal— He sees at a distance the pomp and pageantry of courts he sighs after those stately palaces and that apparatus of human greatness which his vivid fancy has taught him to consider as the supreme good. Men of sublime minds, he conceives, were born a different race from the rest of the sons of men, to them, and them only, he imagines, high heaven intended to commit the reins of earthly government, the remaining

part of mankind he sees below at an immense distance, they, he thinks were born to serve, to administer food for the ambition of their superiors, and become the footstool of their power—Such is Mr. W[ilson], and fraught with these high ideas, it is no wonder that he should exert all his talents to support a form of government so admirably contrived to carry them into execution—But when the people, who possess collectively a mass of knowledge superior to his own, inquire into the principles of that government on the establishment or rejection of which depend their dearest concerns, when he is called upon by the voice of thousands to come and explain that favorite system which he holds forth as an object of their admiration, he comes—he attempts to support by reasoning what reason never dictated, and finding the attempt vain, his great mind, made for nobler purposes, is obliged to stoop to mean evasions and pitiful sophistry; himself not deceived, he strives to deceive the people, and the treasonable attempt delineates his true character, beyond the reach of the pencil of a *West or Peale*, or the pen of a *Valerius*.

And yet that speech, weak and insidious as it is, is the only attempt that has been made to support by argument that political monster THE PROPOSED CONSTITUTION. I have sought in vain amidst the immense heap of trash that has been published on the subject, an argument worthy of refutation, and I have not been able to find it. If you can bear the disgust which the reading of those pieces must naturally occasion, and which I have felt in the highest degree, read them, my fellow citizens, and say whether they contain the least shadow of logical reasoning, say (laying your hands upon your hearts) whether there is anything in them that can impress unfeigned conviction upon your unprejudiced minds. . . .

Now then my fellow citizens, my brethren, my friends; if the sacred flame of liberty be not extinguished in your breasts, if you have any regard for the happiness of yourselves, and your posterity, let me entreat you, earnestly entreat you by all that is dear and sacred to freemen, to consider well before you take an awful step which may involve in its consequences the ruin of millions yet unborn—you are on the brink of a dreadful precipice;—in the name therefore of holy liberty, for which I have fought and for which we have all suffered, I call upon you to make a solemn pause before you proceed. One step more, and perhaps the scene of freedom is closed forever in America. Let not a set of aspiring despots, *who make us* SLAVES and *tell us tis our* CHARTER, wrest from you those invaluable blessings, for which the most illustrious sons of America have bled and died—but exert yourselves, like men, like freemen and like Americans, to transmit unimpaired to your latest

posterity those rights, those liberties, which have ever been so dear to you, and which it is yet in your power to preserve.

1. This essay, dated "Philadelphia, November 3, 1787," and addressed "To the Citizens of Philadelphia," was allegedly written by William Findley, a member of the Pennsylvania Assembly. It lists twenty-three objections to the Constitution. By 9 January it was reprinted in eight newspapers: Mass. (4), R.I. (1), Conn. (1), Pa. (1). It was also reprinted in the November issue of the Philadelphia *American Museum*, as a broadside, and as a pamphlet (Evans 20357–58). For the entire essay, see RCS:Pa., 210–16. For a point-by-point reply, see "Plain Truth," Philadelphia *Independent Gazetteer*, 10 November (BoR, II, 117–20n).

2. See James Wilson: Speech in the Pennsylvania State House Yard, 6 October 1787 (BoR, II, 25–28).

3. In March 1785 the Massachusetts legislature passed a "stamp act" levying duties on legal documents, commercial papers, newspapers, and almanacs.

4. A reference to the mob attack on "Fort Wilson," Wilson's home, on 4 October 1779.

Hugh Williamson: Speech at Edenton, N.C. 8 November 1787 (excerpt)

On 8 November 1787 "a respectable number of Inhabitants" of Chowan County and the town of Edenton, in answer to a call of their representatives in the North Carolina legislature, met at the courthouse at Edenton. Responding to a request from several "fellow citizens," Hugh Williamson delivered a lengthy speech. The meeting then adopted a number of resolutions that supported a strong union, condemned the "anarchy, distress and dishonor" that followed the Revolution, praised the members of the Constitutional Convention (especially George Washington and Benjamin Franklin), and warned against any delays in ratifying the Constitution. The freemen asked their representatives to get the state legislature to call a state ratifying convention to meet at the earliest possible date. They thanked the state's delegates to the Constitutional Convention and expressed their particular obligation to Hugh Williamson "for the able and useful information he has this day given on the subject of the new Constitution proposed."

The excerpt from Williamson's speech printed here is from the New York *Daily Advertiser*, 25 February 1788. The printer had intended to publish it in two parts but was obliged to do so in three (25–27 February). The *Advertiser's* account was reprinted in full in the *Pennsylvania Packet*, 5 March; Charleston *Columbian Herald*, 17, 20 March; and the June issue of the Philadelphia *American Museum*. For the entire speech, see CC:560 and RCS:N.C., 10–20n.

The following Remarks on the New Plan of Government are handed us as the substance of Doctor WILLIAMSON*'s Address to the Freemen of Edenton and the County of Chowan, in North-Carolina, when assembled to instruct their Representatives.*

Though I am conscious that a subject of the greatest magnitude must suffer in the hands of such an advocate, I cannot refuse, at the request

of my fellow-citizens, to make some observations on the new Plan of Government.

It seems to be generally admitted, that the system of Government which has been proposed by the late Convention, is well calculated to relieve us from many of the grievances under which we have been laboring. If I might express my particular sentiments on this subject, I should describe it as more free and more perfect than any form of government that ever has been adopted by any nation; but I would not say it has no faults. Imperfection is inseparable from every human device. Several objections were made to this system by two or three very respectable characters in the Convention, which have been the subject of much conversation;[1] and other objections, by citizens of this State, have lately reached our ears. It is proper that you should consider of these objections. They are of two kinds; they respect the things that are in the system, and the things that are not in it. We are told that there should have been a section for securing the Trial by Jury in Civil cases, and the Liberty of the Press: that there should also have been a Declaration of Rights. In the new system it is provided, that "*The Trial of all crimes*, except in cases of Impeachment," *shall be by Jury*, but this provision could not possibly be extended to all *Civil* cases. For it is well known that the Trial by Jury is not general and uniform throughout the United States, either in cases of Admiralty or of Chancery; hence it became necessary to submit the question to the General Legislature, who might accommodate their laws on this occasion to the desires and habits of the nation. Surely there is no prohibition in a case that is untouched.

We have been told that the Liberty of the Press is not secured by the New Constitution. Be pleased to examine the plan, and you will find that the Liberty of the Press and the laws of Mahomet are equally affected by it. The New Government is to have the power of protecting literary property; the very power which you have by a special act delegated to the present Congress.[2] There was a time in England, when neither book, pamphlet, nor paper could be published without a licence from Government. That restraint was finally removed in the year 1694 and by such removal, their press became perfectly free, for it is not under the restraint of any licence.[3] Certainly the new Government can have no power to impose restraints. The citizens of the United States have no more occasion for a second Declaration of Rights, than they have for a section in favor of the press. Their rights, in the several States, have long since been explained and secured by particular declarations, which make a part of their several Constitutions. It is granted, and perfectly understood, that under the Government of the Assem-

blies of the States, and under the Government of the Congress, every right is reserved to the individual, which he has not expressly delegated to this, or that Legislature. . . .

1. Elbridge Gerry, George Mason, and Edmund Randolph refused to sign the Constitution at the conclusion of the Constitutional Convention. Gerry's objections were printed on 3 November, Mason's on 21, 22, and 23 November, and Randolph's around 27 December (BoR, II, 50–52, 28–31, 211–16, respectively).

2. On 2 May 1783 Congress adopted a committee report, in Williamson's handwriting, urging the states to secure copyright protection for authors (JCC, XXIV, 326–27). In November 1785, Williamson, as a member of the North Carolina House of Commons, proposed a "Bill for securing Literary property." This bill, incorporating the language of the congressional committee report, became law on 29 December 1785 (NCSR, XVII, 280; XXIV, 747–48). The law did not delegate the power of copyright protection to Congress, but provided protection to authors in other states that had passed similar laws.

3. The Printing Act of 1662 authorized the licensing of the press in England; it was renewed until 1679 and again in 1685 and 1692. In 1694 the House of Lords voted for renewal but the Commons opposed it, ending the licensing of the press (Frederick S. Siebert, *Freedom of the Press in England, 1476–1776* [Urbana, Ill., 1952], 237–63).

Federal Farmer, Letters to the Republican New York, 8 November 1787 (excerpts)

One of the most significant publications of the ratification debate was a forty-page pamphlet entitled *Observations Leading to a Fair Examination of the System of Government Proposed by the Late Convention; and to Several Essential and Necessary Alterations in It. In a Number of Letters from the Federal Farmer to the Republican.* The pamphlet consists of five numbered letters dated 8, 9, 10, 12, and 13 October. According to a prefatory "Advertisement" in *An Additional Number of Letters from the Federal Farmer* (see last paragraph below), "Four editions, (and several thousands)" of the *Letters* were "in a few months printed and sold in the several states." A newspaper advertisement for the second pamphlet edition stated that the first set of *Letters* had "undergone several impressions in the different states, and several thousands of them have been sold" (*New York Journal* and *New York Packet*, 2 May 1788). Copies of three editions have been located. Since the place of publication and the name of the printer do not appear on the title pages of any of the extant copies, it is a matter of conjecture as to when, where, and by whom each edition was published. Publication of these editions has generally been attributed to Thomas Greenleaf of the *New York Journal.* However, a detailed analysis of the texts of the editions, of the advertisements offering the pamphlets for sale, and of other evidence suggests that two of the editions were published by one printer and that the third edition was published by someone else.

On 8 November the weekly *New York Journal* advertised that the *Letters* was "Just received, and to be SOLD, at *T. Greenleaf's Printing-Office.* And by Mr. [Robert] Hodge, and T. [Thomas] Allen, Book-sellers, in Queen-street, and at Mr. Loudon's, Printing-Office, Water-street." The next day the semiweekly *New York Packet*, printed by Samuel Loudon and his son John, advertised the *Letters*

as "Just Published, and to be Sold by the Printers hereof, And by most of the Printers and Booksellers in this city." The pamphlet was probably printed a few days before both advertisements because, by 9 November, James Kent read the *Letters* in Poughkeepsie, about eighty-five miles north of New York City (CC:246). In transmitting the *Letters* to a friend in Philadelphia on 24 November, New York City Antifederalist Charles Tillinghast wrote that the pamphlet had been "lately published here" (to Timothy Pickering, CC:288–A).

The first edition of the *Letters*, which was misdated 1777 on the title page, was filled with errors (Evans 20454). Consequently, a corrected edition was printed, apparently from the same forms (Evans 20455). This corrected edition was printed before 14 November because, on that day, the Poughkeepsie *Country Journal* began reprinting the *Letters* with the corrections. A third edition—"Re-printed by order of a Society of Gentlemen"—was published incorporating the corrections made in the second edition, as well as some additional changes (Evans 20456). There are also typographical differences to indicate that the third edition was struck off by another printer. Only one advertisement directly referred to this edition. On 23 November the Philadelphia *Independent Gazetteer* announced: "Just Come to Hand, and to be sold by Robert Aitken, Bookseller, . . . Printed by Order of a Society of Gentlemen." A fourth edition of the *Letters* was probably published by Edward E. Powars of the Boston *American Herald* in early January 1788, but no copies are extant (see below).

The authorship of the *Letters* had long been attributed to Richard Henry Lee. This attribution was first made by "New England," a Federalist newspaper essay that accused Lee of writing the *Letters* with the assistance of "several persons of reputed good sense in New-York" (*Connecticut Courant*, 24 December, CC:372). "New England," however, offered no evidence for Lee's authorship. Four Massachusetts newspaper items derived from "New England" also identified Lee as the "Federal Farmer" (*Massachusetts Gazette*, 1 January 1788 [CC:390 E–F]; *Massachusetts Centinel*, 2 January [CC:390–G]; Boston *American Herald*, 7 January [CC:390–H]).

Private letters offer few clues as to the authorship of the *Letters*. On 28 November 1787 Antifederalist Hugh Hughes of Dutchess County, N.Y., wrote Charles Tillinghast that "The federal Farmer, I think I am sure of, as one of the Letters contains some Part of a Conversation I once had, when I spent an Evening with him—Perhaps this may bring him to your Memory—If not, please to observe the first Part of the 2nd Paragraph in the 7th Page, and you will recollect, I expect, as I told you that he was perfectly in Sentiment with me on that Subject—I think he has great Merit, but not as much as he is capable of meriting—But, perhaps, he reserves himself for another Publication; if so, it may be all very right" (CC:298). (For another comment by Hughes, see "A Countryman" VI, *New York Journal*, 14 February 1788, RCS:N.Y., 776–78.)

Recently scholars have effectively challenged Lee's authorship. Some have pointed to Melancton Smith as the author, but more evidence points to Elbridge Gerry as the author.

Most historians have been so preoccupied with the question of Lee's authorship that they have ignored "The Republican"—the person to whom the

letters were addressed. In New York politics, Governor George Clinton, one of the state's Antifederalist leaders, was known as "The Republican" by at least two of his supporters (Charles Tillinghast to Hugh Hughes, 27–28 January 1788, RCS:N.Y., 776–82n).

The *Letters* circulated in New York for months. On 8 November almost identical passages and references to similar events in the "Federal Farmer's" Letters I and V appeared in "Brutus, Junior," in the *New York Journal* (CC:239). The *New York Packet* ran its 9 November advertisement for the pamphlet weekly until 30 November, while the *New York Journal*, which became a daily on 19 November, published six advertisements, each different from the others, a total of about fifty times by mid-February 1788. On 22 December the *Journal* announced that the *Letters* had been "Just Published, and to be Sold. . . ." This advertisement possibly indicates that a new printing had just become available. (A variant copy of the *Letters* in the Rare Book Room of the New York Public Library, with the letter "s" dropped from the word "Observations" on the title page, was possibly part of a new printing of the *Letters*. Except for this change on the title page, this printing is identical to the second edition of the *Letters* mentioned above.)

At the request of "a customer" the Poughkeepsie *Country Journal* reprinted the entire pamphlet in weekly installments from 14 November to 2 January 1788. Addressing the *Journal's* printer, "a customer" stated: "It is my opinion that every well-written piece in favor or against the new Constitution, ought to be laid before the public. You have published several pieces on both sides, and being sensible of your impartiality, the republication of the following letters cannot but afford general satisfaction." On 11 January 1788 Abraham Van Vechten of Johnstown, N.Y., wrote Henry Oothoudt and Jeremiah Van Rensselaer of Albany thanking them for a copy of the *Letters* that they had sent him on 2 January. He declared that he would deliver it to some "Friends here for their perusal" (RCS:N.Y., 600). A month later a Federalist wrote from Albany that the *Letters*, "Centinel," and other Antifederalist publications "are scattered all over the County" (William North to Henry Knox, 13 February, RCS:N.Y., 766).

On 23 November Philadelphia Antifederalist John Nicholson sent the *Letters* to Federalist George Latimer, then serving as a Philadelphia delegate in the recently convened Pennsylvania Convention (RCS:Pa. Supplement, 583). On 24 November New York Antifederalist Charles Tillinghast sent the pamphlet to Federalist Timothy Pickering who was also a delegate in the Pennsylvania Convention (CC:288–A). Meanwhile, the Philadelphia *Independent Gazetteer* ran Robert Aitken's advertisement on 23, 26, and 28 November. Between 27 and 30 November Aitken sold 121 pamphlets to Nicholson and three other Philadelphia Antifederalist leaders—Nicholson (60), James Hutchinson (25), Alexander Boyd (24), and Edward Pole (12) (Robert Aitken Wastebook, 1771–1802, PPL). These leaders presumably distributed their purchases throughout the state as they had done before with other Antifederalist literature.

By mid-December the *Letters* appeared in Connecticut. Jeremiah Wadsworth of Hartford reported on 16 December that "A Pamphlet is circulateing here—Observations &c Signed the Federal Farmer—written with Art & tho by no

means unanswerable it is calculated to do much harm—it came from New York under cover'' for known and suspected opponents of the Constitution (to Rufus King, CC:283–E). ''New England'' charged that John Lamb had sent the pamphlets (CC:372). On 15 January 1788 Antifederalist Hugh Ledlie of Hartford wrote Lamb that he had heard that some members of the Connecticut Convention had made ''sly, mischevious insinuations'' that the money Lamb received as collector of the New York impost enabled him and others ''to write the foederal farmer & other false Libels and send them into this & the Neighbouring States.'' Ledlie wrote that many of the pamphlets sent to Connecticut had gotten ''into the wrong hands'' and had been ''secreted, burnt and distributed amongst'' Federalists ''in order to torture ridicule & make shrewd remarks'' (RCS:Conn., 576, 578–79).

By early January 1788 the *Letters* began circulating in Boston. On 28 December 1787 a correspondent in the *Massachusetts Gazette* stated that ''A flaming antifederal pamphlet'' would soon appear in Boston and would ''be circulated throughout the state'' (CC:390–A). Three days later Edward E. Powars announced in his weekly Boston *American Herald* that the *Letters* would be for sale at his office on Wednesday, 2 January 1788 (CC:390–B). Powars was harshly criticized in other Boston newspapers for his announcement that the *Letters* would be ''re-ushered into existance'' (*Massachusetts Gazette*, 1 January, CC:390 C–D); while a correspondent from Cambridge expressed surprise that Samuel Adams ''should attempt to divide and distract our councils, by encouraging the *republication* of Richard H. Lee's hacknied trumpery'' (*ibid.*, CC:390–E). Three days after the scheduled Boston release of the pamphlet, Federalist printer Benjamin Russell reprinted ''New England'' in his *Massachusetts Centinel* to offset the effects of the *Letters*. Powars responded on 7 January that Federalists resorted to ''*personal detraction*'' because they were ''unable to answer the sound reasoning and weighty objections to the New System of Government'' contained in the *Letters* (CC:390–H). In another statement on 7 January, Powars declared triumphantly: '' 'Tis finished,' 'tis done! And may be purchased of EDW. E. POWARS. . . . A Pamphlet, entitled. . . . *Although the above Pamphlet is not bulky, nor yet over* 'wordy,' *it breathes the* pure, uncontaminated *air of Republicanism, as well as the celebrated spirit of the year* 1775. *It is written* coolly *and* dispassionately, *taking* Reason *for its guide, and* solid *argument for its basis.—It gives* 'a sea' *of sentiment in* '40 *pages of octavo.'—But it is needless to speak its praises in an advertisement*—Purchase, *and* read *for yourselves, ye Patriots of* Columbia!'' (CC:390–I). Powars also advertised the sale of the ''Federal Farmer'' in the *American Herald* on 21 and 28 January and at the end of his pamphlet reprint edition of the ''Dissent of the Minority of the Pennsylvania Convention'' (CC:353), which was published in late January or early February.

On 1 February, about a week before the Massachusetts Convention adjourned, the *Massachusetts Gazette* printed two excerpts from the *Letters* upon the request of a reader, who declared that he no longer supported the Constitution after hearing the Convention debates and reading the *Letters*. On 18 February these excerpts were reprinted in the *Newport Mercury*.

The *Letters* from the ''Federal Farmer'' met with a mixed response from Federalists. ''Publius'' admitted that the ''Federal Farmer'' was the ''most plausible'' of the Antifederalists to appear in print (*The Federalist* 68, New York

Independent Journal, 12 March 1788, CC:615, p. 376). Edward Carrington of Virginia, commenting on the *Letters* and the *Additional Letters* printed in May 1788 (see last paragraph below), declared that "These letters are reputed the best of any thing that has been written" against the Constitution (to Thomas Jefferson, 9 June 1788, RCS:Va., 1591). James Kent of New York wrote that the Constitution had "considerable Defects" and that the "Federal Farmer" had "illustrated those Defects in a candid & rational manner" (to Nathaniel Lawrence, 9 November 1787, CC:246). The reviewer of the *Letters* and the *Additional Letters* in the New York *American Magazine* of May 1788 stated that the "Federal Farmer" wrote "with more candor and good sense" than most opponents of the Constitution even though his arguments wanted method. The reviewer, probably Noah Webster, also challenged the "Federal Farmer" on several points (RCS:N.Y. Supplement, 288–89). In general, however, Federalists published few rebuttals to the *Letters*. (See "Cato," Poughkeepsie *Country Journal*, 19 December, supplement; and "Curtiopolis," New York *Daily Advertiser*, 18 January 1788, RCS:N.Y., 438–40, 625–29n.)

One Federalist, however, did write a point-by-point refutation. On 24 December, a month after Charles Tillinghast had sent the *Letters* to him, Timothy Pickering began writing an eighteen-page letter refuting the "Federal Farmer's" arguments (CC:288–C). A month later, on 28 January 1788, Tillinghast sent Hugh Hughes a copy of Pickering's letter, stating that he believed Pickering wanted it published. Tillinghast, however, refused to submit the letter for publication.

For the entire pamphlet, see CC:242.

An Additional Number of Letters from the Federal Farmer . . . was advertised in New York in early May 1788 (Evans 21197. See BoR, II, 449–65n.).

. . . LETTER II.

OCTOBER 9, 1787.

. . . There are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people, in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern: and the latter will know they cannot be passed unperceived by the former, and without giving a general alarm—These rights should be made the basis of every constitution; and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only.—I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights, from one common source, the British systems; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ so essentially in these respects, and even in the important article of the trial by jury, that when assembled in con-

vention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact. If so, we proceed to consolidate the states on no solid basis whatever.

But I do not pay much regard to the reasons given for not bottoming the new constitution on a better bill of rights. I still believe a complete federal bill of rights to be very practicable. Nevertheless I acknowledge the proceedings of the convention furnish my mind with many new and strong reasons, against a complete consolidation of the states. They tend to convince me, that it cannot be carried with propriety very far—that the convention have gone much farther in one respect than they found it practicable to go in another; that is, they propose to lodge in the general government very extensive powers—*powers* nearly, if not altogether, complete and unlimited, over the purse and the sword. But, in its organization, they furnish the strongest proof that the proper limbs, or parts of a government, to support and execute those powers on proper principles (or in which they can be safely lodged) cannot be formed. These powers must be lodged somewhere in every society; but then they should be lodged where the strength and guardians of the people are collected. They can be wielded, or safely used, in a free country only by an able executive and judiciary, a respectable senate, and a secure, full, and equal representation of the people. I think the principles I have premised or brought into view, are well founded—I think they will not be denied by any fair reasoner. It is in connection with these, and other solid principles, we are to examine the constitution. It is not a few democratic phrases, or a few well formed features, that will prove its merits; or a few small omissions that will produce its rejection among men of sense; they will enquire what are the essential powers in a community, and what are nominal ones, where and how the essential powers shall be lodged to secure government, and to secure true liberty. . . .

LETTER IV.

OCTOBER 12th, 1787.

. . . The federal constitution, the laws of congress made in pursuance of the constitution, and all treaties must have full force and effect in all parts of the United States; and all other laws, rights and constitutions which stand in their way must yield: It is proper the national laws should be supreme, and superior to state or district laws; but then the national laws ought to yield to alienable[1] or fundamental rights—and national laws, made by a few men, should extend only to a few national objects. This will not be the case with the laws of congress: To have any proper idea of their extent, we must carefully examine the legislative, executive and judicial powers proposed to be lodged in the general

government, and consider them in connection with a general clause in art. 1. sect. 8. in these words (after enumerating a number of powers) "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 powers of this government as has been observed, extend to internal as well as external objects, and to those objects to which all others are subordinate; it is almost impossible to have a just conception of these powers, or of the extent and number of the laws which may be deemed necessary and proper to carry them into effect, till we shall come to exercise those powers and make the laws. In making laws to carry those powers into effect, it will be expected, that a wise and prudent congress will pay respect to the opinions of a free people, and bottom their laws on those principles which have been considered as essential and fundamental in the British, and in our government: But a congress of a different character will not be bound by the constitution to pay respect to those principles.

It is said, that when the people make a constitution, and delegate powers, that all powers not delegated by them to those who govern, is reserved in the people; and that the people, in the present case, have reserved in themselves, and in their state governments, every right and power not expressly given by the federal constitution to those who shall administer the national government. It is said, on the other hand, that the people, when they make a constitution, yield all power not expressly reserved to themselves. The truth is, in either case, it is mere matter of opinion, and men usually take either side of the argument, as will best answer their purposes: But the general presumption being, that men who govern, will, in doubtful cases, construe laws and constitutions most favourably for encreasing their own powers; all wise and prudent people, in forming constitutions, have drawn the line, and carefully described the powers parted with and the powers reserved. By the state constitutions, certain rights have been reserved in the people; or rather, they have been recognized and established in such a manner, that state legislatures are bound to respect them, and to make no laws infringing upon them. The state legislatures are obliged to take notice of the bills of rights of their respective states. The bills of rights, and the state constitutions, are fundamental compacts only between those who govern, and the people of the same state.

In the year 1788 the people of the United States make a federal constitution, which is a fundamental compact between them and their federal rulers; these rulers, in the nature of things, cannot be bound to take notice of any other compact. It would be absurd for them, in making laws, to look over thirteen, fifteen, or twenty state constitutions,

to see what rights are established as fundamental, and must not be infringed upon, in making laws in the society. It is true, they would be bound to do it if the people, in their federal compact, should refer to the state constitutions, recognize all parts not inconsistent with the federal constitution, and direct their federal rulers to take notice of them accordingly; but this is not the case, as the plan stands proposed at present; and it is absurd, to suppose so unnatural an idea is intended or implied, I think my opinion is not only founded in reason, but I think it is supported by the report of the convention itself. If there are a number of rights established by the state constitutions, and which will remain sacred, and the general government is bound to take notice of them—it must take notice of one as well as another; and if unnecessary to recognize or establish one by the federal constitution, it would be unnecessary to recognize or establish another by it. If the federal constitution is to be construed so far in connection with the state constitutions, as to leave the trial by jury in civil causes, for instance, secured; on the same principles it would have left the trial by jury in criminal causes, the benefits of the writ of habeas corpus, &c. secured; they all stand on the same footing; they are the common rights of Americans, and have been recognized by the state constitutions: But the convention found it necessary to recognize or re-establish the benefits of that writ, and the jury trial in criminal cases. As to EXPOST FACTO laws, the convention has done the same in one case, and gone further in another. It is a part of the compact between the people of each state and the rulers, that no EXPOST FACTO laws shall be made. But the convention, by Art. 1. Sect. 10. have put a sanction upon this part even of the state compacts. In fact, the 9th and 10th Sections in Art. 1. in the proposed constitution, are no more nor less, than a partial bill of rights; they establish certain principles as part of the compact upon which the federal legislators and officers can never infringe. It is here wisely stipulated, that the federal legislature shall never pass a bill of attainder, or EXPOST FACTO law; that no tax shall be laid on articles exported, &c. The establishing of one right implies the necessity of establishing another and similar one.

On the whole, the position appears to me to be undeniable, that this bill of rights ought to be carried farther, and some other principles established, as a part of this fundamental compact between the people of the United States and their federal rulers.

It is true, we are not disposed to differ much, at present, about religion; but when we are making a constitution, it is to be hoped, for ages and millions yet unborn, why not establish the free exercise of religion, as a part of the national compact. There are other essential rights, which we have justly understood to be the rights of freemen; as

freedom from hasty and unreasonable search warrants, warrants not founded on oath, and not issued with due caution, for searching and seizing men's papers, property, and persons. The trials by jury in civil causes, it is said, varies so much in the several states, that no words could be found for the uniform establishment of it. If so the federal legislation will not be able to establish it by any general laws. I confess I am of opinion it may be established, but not in that beneficial manner in which we may enjoy it, for the reasons beforementioned. When I speak of the jury trial of the vicinage, or the trial of the fact in the neighbourhood,—I do not lay so much stress upon the circumstance of our being tried by our neighbours: in this enlightened country men may be probably impartially tried by those who do not live very near them: but the trial of facts in the neighbourhood is of great importance in other respects. Nothing can be more essential than the cross examining witnesses, and generally before the triers of the facts in question. The common people can establish facts with much more ease with oral than written evidence; when trials of facts are removed to a distance from the homes of the parties and witnesses, oral evidence becomes intolerably expensive, and the parties must depend on written evidence, which to the common people is expensive and almost useless; it must be frequently taken ex-parte, and but very seldom leads to the proper discovery of truth.

The trial by jury is very important in another point of view. It is essential in every free country, that common people should have a part and share of influence, in the judicial as well as in the legislative department. To hold open to them the offices of senators, judges, and officers to fill which an expensive education is required, cannot answer any valuable purposes for them; they are not in a situation to be brought forward and to fill those offices; these, and most other offices of any considerable importance, will be occupied by the few. The few, the well born, &c. as Mr. Adams calls them,[2] in judicial decisions as well as in legislation, are generally disposed, and very naturally too, to favour those of their own description.

The trial by jury in the judicial department, and the collection of the people by their representatives in the legislature, are those fortunate inventions which have procured for them in this country, their true proportion of influence, and the wisest and most fit means of protecting themselves in the community. Their situation, as jurors and representatives, enables them to acquire information and knowledge in the affairs and government of the society; and to come forward, in turn, as the centinels and guardians of each other. I am very sorry that even a few of our countrymen should consider jurors and representa-

tives in a different point of view, as ignorant, troublesome bodies, which ought not to have any share in the concerns of government.

I confess I do not see in what cases the Congress can, with any pretence of right, make a law to suppress the freedom of the press; though I am not clear, that Congress is restrained from laying any duties whatever on printing and from laying duties particularly heavy on certain pieces printed, and perhaps Congress may require large bonds for the payment of these duties. Should the printer say, the freedom of the press was secured by the constitution of the state in which he lived, Congress might, and perhaps, with great propriety, answer, that the federal constitution is the only compact existing between them and the people; in this compact the people have named no others, and therefore Congress, in exercising the powers assigned them, and in making laws to carry them into execution, are restrained by nothing beside the federal constitution, any more than a state legislature is restrained by a compact between the magistrates and people of a county, city, or town of which the people, in forming the state constitution, have taken no notice.

It is not my object to enumerate rights of inconsiderable importance; but there are others, no doubt, which ought to be established as a fundamental part of the national system. . . .

1. In the second printing "alienable" was changed to "unalienable."

2. For John Adams's use of the term, "the well born," see page x of the preface to volume one of *A Defence of the Constitutions of the Government of the United States of America* . . . (London, 1787).

Cincinnatus II: To James Wilson, Esquire
New York Journal, 8 November 1787

This essay, an answer to James Wilson's speech of 6 October (BoR, II, 25–28), was ready for publication earlier, but was "unavoidably postponed, for want of room" (*New York Journal*, 1 November). It was reprinted in the Philadelphia *Independent Gazetteer* on 16 November and in the Rhode Island *Providence Gazette* on 8 December. The first two paragraphs, unsigned by "Cincinnatus," were reprinted in the *Vermont Gazette* on 3 December.

For the authorship, circulation, and impact of "Cincinnatus," see BoR, II, 78–79.

Sir, I have proved, sir, that not only some power is given in the constitution to restrain, and even to subject the press, but that it is a power totally unlimited; and may certainly annihilate the freedom of the press, and convert it from being the palladium of liberty to become an engine of imposition and tyranny. It is an easy step from restraining the press to making it place the worst actions of government in so favorable a

light, that we may groan under tyranny and oppression without knowing from whence it comes.

But you comfort us by saying,—"there is no reason to suspect so popular a privilege will be neglected." The wolf, in the fable, said as much to the sheep, when he was persuading them to trust him as their protector, and to dismiss their guardian dogs.[1] Do you indeed suppose, Mr. Wilson, that if the people give up their privileges to these new rulers they will render them back again to the people? Indeed, sir, you should not trifle upon a question so serious—You would not have us to suspect any ill. If we throw away suspicion—to be sure, the thing will go smoothly enough, and we shall deserve to continue a free, respectable, and happy people. Suspicion shackles rulers and prevents good government. All great and honest politicians, *like yourself*, have reprobated it. Lord Mansfield is a great authority against it, and has often treated it as the worst of libels. But such men as Milton, Sidney, Locke, Montesquieu, and Trenchard, have thought it essential to the preservation of liberty against the artful and persevering encroachments of those with whom power is trusted. You will pardon me, sir, if I pay some respect to these opinions, and wish that the freedom of the press may be *previously* secured as a *constitutional* and *unalienable right*, and not left to the precarious care of popular privileges which may or may not influence our new rulers. You are fond of, and happy at, quaint expressions of this kind in your observation—that a formal declaration would have done harm, by implying, that some degree of power was given when we undertook to define its extent. This thought has really a brilliancy in it of the first water. But permit me, sir, to ask, why any saving clause was admitted into this constitution, when you tell us, every thing is reserved that is not expressly given? Why is it said in sec. 9th, "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by Congress, prior to the year, 1808." There is no power expressly given to the Congress to prohibit migrations and importations. By your doctrine then they could have none, and it was, according to your own position, nugatory to declare they should not do it. Which are we to believe, sir,—you or the constitution? The text, or the comment. If the former, we must be persuaded, that in the contemplation of the framers of the constitution implied powers were given, otherwise the exception would have been an absurdity. If we listen to you we must affirm it to be a distinctive characteristic of the constitution, that—"what is not expressly given is reserved." Such are the inconsistences into which men over ingenuous, like yourself, are betrayed in advocating a bad cause.

Perhaps four months more consideration of the subject, would have rendered you more guarded.

I come now to the consideration of the trial by jury in civil cases. And here you have, indeed, made use of your professional knowledge—But you did not tell the people that your profession was always to advocate one side of a question—to place it in the most favorable, though false, light—to rail where you could not reason—to pervert where you could not refute—and to practice every fallacy on your hearers—to mislead the understanding and pervert judgment. In right of this professional practice, you make a refutable objection of your own, and then triumphantly refute it. The objection you impute to your opponents is—the trial by jury is abolished in civil cases. This you call a disingenuous form—and truly it is very much so on your part and of your own fabrication. The objection in its true form is, that—trial by jury is not secured in civil cases. To this objection, you could not possibly give an answer; you therefore ingenuously coined one to which you could make a plausible reply. We expected, and we had a right to expect, that such an inestimable privilege as this would have been secured—that it would not have been less dependent on the arbitrary exposition of future judges, who, when it may suit the arbitrary views of the ruling powers will explain it away at pleasure. We may expect Tressellians, Jeffrees's, and Mansfield's here, and if they should not be native with us, they may possibly be imported.[2]

But, if taken even on your own ground it is not so clearly tenable. In point of legal construction, the trial by jury does seem to be taken away in civil cases. It is a law maxim, that the expression of one part is an exclusion of the other. In legal construction therefore, the reservation of trial by jury in criminal, is an exclusion of it in civil cases. Why else should it be mentioned at all? Either it followed of course in both cases, or it depended on being stipulated. If the first, then the stipulation was nugatory—if the latter, then it was in part given up. Therefore, either we must suppose the Convention did a nugatory thing; or that by the express mention of jury in criminal, they meant to exclude it in civil cases. And that they did intend to exclude it, seems the more probable, as in the appeal they have taken special care to render the trial by jury of no effect by expressly making the court judges both of law and fact. And though this is subjected to the future regulation of Congress, yet it would be absurd to suppose, that the regulation meant its annihilation. We must therefore conclude, that in appeals the trial by jury is expressly taken away, and in original process it is by legal implication taken away in all civil cases.

Here then I must repeat—that you ought to have stated fairly to the people, that the trial by jury was not secured; that they might know what, it was they were to consent to; and if knowing it, they consented, the blame could not fall on you. Before they decide, however, I will take leave to lay before them the opinion of that great and revered Judge Lord Camden,[3] whose authority is, I hope, at least equal to that of Mr. Wilson.—"There is, says he, scarce any matter of challenge allowed to the judge, but several to the jurors, and many of them may be removed without any reason alledged. This seems to promise as much impartiality as human nature will admit, and absolute perfection is not attainable, I am afraid, either in judge or jury or any thing else. The trial by our country, is in my opinion, the great bulwark of freedom, and for certain, the admiration of all foreign writers and nations. The last writer of any distinguished note, upon the principles of government, the celebrated Montesquieu, is in raptures with this peculiar perfection in the English policy. From juries running riot, if I may say so, and acting wildly at particular seasons, I cannot conclude, like some Scottish Doctors of our law and constitutions, that their power should be lessened. This would, to use the words of the wise, learned, and intrepid Lord Chief Justice Vaughan,[4] be—a strange newfangled conclusion, after a trial so celebrated for so many hundreds of years."

Such are the opinions of Lord Camden and Vaughan, and multitudes of the first names, both English and other foreigners might be cited, who bestow unbounded approbation on this best of all human modes for protecting, life, liberty, and property.

I own then, it alarms me, when I see these Doctors of our constitutions cutting in twain this sacred shield of public liberty and justice. Surely my countrymen will think a little before they resign this strong hold of freedom. Our state constitutions have held it sacred in all its parts. They have anxiously secured it. But that these may not shield it from the intended destruction in the new constitution, it is therein as anxiously provided, that "this constitution, and the laws of the United States, which shall be made in pursuance thereof; or which shall be made under the authority of the United States, shall be the supreme laws of the land; and the judges in every state, shall be bound thereby; any thing in the constitution and laws of any state, to the contrary notwithstanding."

Thus this new system, with one sweeping clause, bears down every constitution in the union, and establishes its arbitrary doctrines, supreme and paramount to all the bills and declarations of rights, in which we vainly put our trust, and on which we rested the security of our often declared, unalienable liberties. But I trust the whole people

of this country, will unite, in crying out, as did our sturdy ancestors of old—*Nolumus leges anglicæ mutari.*—We will not part with our birthright.

1. Aesop: The Wolves and the Sheep.

2. Robert Tresilian (d. 1388), George Jeffreys (1648–1689), and the Earl of Mansfield (William Murray, 1705–1793) were all prominent English judges, notorious for conducting illegal proceedings and for rendering unjust, harsh, and brutal decisions. For more on Mansfield, see BoR, II, 20, note 4.

3. Charles Pratt (1714–1794), the first Earl Camden and Chief Justice of the Court of Common Pleas, instructed the jury that general warrants were unconstitutional in the case of *Wilkes* v. *Wood* in 1763. In the House of Lords he had opposed, on constitutional grounds, the taxing of the American colonies and the passage of the Stamp Act.

4. John Vaughan (1603–1674) was appointed Lord Chief Justice of the Court of Common Pleas in 1668.

Centinel III

Philadelphia Independent Gazetteer, 8 November 1787 (excerpts)

On 9 November an errata for "Centinel" III was printed in the *Independent Gazetteer*. The next day the *Pennsylvania Herald* reprinted "Centinel" III, with three of the four corrections. Because other errors still existed, the author requested that the Philadelphia *Freeman's Journal* reprint the essay with more corrections, stating that "The third number of the Centinel having been very inaccurately printed in the Independent Gazetteer, occasioned by the length of the piece and the shortness of the time, and from some omissions in the errata as published, the copy in the Herald is not entirely free from errors;—the author therefore requests you to republish it in your independent and impartial paper as corrected by himself." On 14 November the *Freeman's Journal* complied by printing "Centinel" III.

In addition to appearing in the *Pennsylvania Herald*, the *Gazetteer's* version of "Centinel" III was reprinted, with three of the four corrections, in the Providence, R.I., *United States Chronicle* on 3 January 1788. The *Journal's* version was reprinted in the *New York Journal* on 20 November, in the Boston *American Herald* on 7 January, and in a New York pamphlet anthology published in April 1788 (Evans 21344). For the entire essay, see CC:243.

For replies to "Centinel" III, see "Portius," *Independent Gazetteer*, 12 November (RCS:Pa. Supplement, 553–54); and "Caroliniensis," Charleston *City Gazette*, 3 January, RCS:S.C., 60–65n.

For the entire essay, see CC:243. For a discussion of the authorship, circulation, and impact of "Centinel," see BoR, II, 21–23.

To the PEOPLE of PENNSYLVANIA

. . . A comparison of the authority under which the convention acted, and their form of government will shew that they have despised their delegated power, and assumed sovereignty; that they have entirely annihilated the old confederation, and the particular governments of the

several states, and instead thereof have established one general government that is to pervade the union; constituted on the most *unequal* principles, destitute of accountability to its constituents, and as despotic in its nature, as the Venetian aristocracy; a government that will give full scope to the magnificent designs of the *well-born*; a government where tyranny may glut its vengeance on the *low-born*, unchecked by *an odious bill of rights*: as has been fully illustrated in my two preceding numbers;[1] and yet as a blind upon the understandings of the people, they have continued the forms of the particular governments, and termed the whole a confederation of the United States, pursuant to the sentiments of that profound, but corrupt politician Machiavel, who advises any one who would change the constitution of a state, to keep as much as possible to the old forms; for then the people seeing the same officers, the same formalities, courts of justice and other outward appearances, are insensible of the alteration, and believe themselves in possession of their old government.[2] Thus Cæsar, when he seized the Roman liberties, caused himself to be chosen dictator (which was an ancient office) continued the senate, the consuls, the tribunes, the censors, and all other offices and forms of the commonwealth; and yet changed Rome from the most free, to the most tyrannical government in the world. . . .

The general acquiescence of one description of citizens in the proposed government, surprises me much; if so many of the Quakers have become indifferent to the sacred rights of conscience, so amply secured by the constitution of this commonwealth; if they are satisfied, to rest this inestimable privilege on the discretion of the future government; yet in a political light they are not acting wisely; in the state of Pennsylvania, they form so considerable a portion of the community, as must ensure them great weight in the government; but in the scale of general empire, they will be lost in the ballance.[3] . . .

1. "Centinel" I and II, 5 and 24 October, BoR, II, 21–25, 60–64.

2. Leslie J. Walker, ed. and trans., *The Discourses of Niccolò Machiavelli* (2 vols., London, 1950), I, Book One, Discourse 25, pp. 272–73. *The Discourses* were first published in 1531, four years after Machiavelli's death.

3. "Portius" denounced "Centinel's" attempt "to work upon the passions of the Quakers," arguing that it was the Pennsylvania Antifederalists that Quakers had to fear. In support of his argument, "Portius" referred to the state Constitutionalists' opposition to the repeal of the Test Law that disenfranchised many Quakers (*Independent Gazetteer*, 12 November, RCS:Pa. Supplement, 554). "Caroliniensis" argued that "the quakers will not only retain their influence and importance in the state government of Pennsylvania but, as there will be no religious test, they will have weight, in proportion to their numbers, in the great scale of continental government" (Charleston *City Gazette*, 3 January 1788, RCS:S.C., 61).

Uncus

Maryland Journal, 9 November 1787 (excerpt)

"Uncus" is an answer to "Centinel" I and II (BoR, II, 21–25, 60–64), which had been reprinted in the *Maryland Journal* on 30 October and 2 November. "Uncus" was one of only two major critiques of "Centinel" to originate outside of Pennsylvania. It was reprinted in the Boston *American Herald* on 10 December and in the Providence, R.I., *United States Chronicle* on 10 January 1788. For the entire "Uncus" essay, see CC:247. For additional criticism of "Centinel" by "Uncus," see the *Maryland Journal*, 30 November, (RCS:Md., 64–70n).

. . . It would be useless to *refill* a news-paper with repetition of the *Centinel's* objections—*Nothing done by the Convention pleases him!* In No. 1, he says, "if it were not for the stability and attachment which time and habit give to government, it would be in the power of the enlightened and aspiring, if they should combine, at any time, to destroy the best establishments"—If this be true, the forming a bill of rights would have been as needless as its existence would have been useless;—for, in the *first* instance, *it* would be no kind of security to the people—and in the *last*, the people do not want such a security, having already *every* "*stability and attachment which time and habit*" can render necessary to fix in their minds, the greatest horror of tyranny, and the most sacred and exalted ideas of *that liberty*, which they have *ever* enjoyed, and to which they know they are entitled. Speaking of the constitution of Great-Britain he says, "the only operative and efficient check upon the conduct of administration, is *the sense of the people at large*;" and are not *the sentiments of* "*the people at large*" *of these States, as tenacious of their liberties* as those of England?

To proceed with the contradictions and inconsistencies of Centinel, would perhaps be thought an insult to the understanding of an enlightened community; but would not much ink have been saved, and the little expended to better purpose, had he declared, in *a few words*, that man is *an imperfect creature*, and, that owing to a difference of constitution, climate and education, he did not believe they would ever all think *exactly* alike; and, as it was not *certain* that, *even* should a law, dictated by *that wisdom* which cannot err, be offered *them*, they would all agree to it, it would be the *best* to have *none?*

The *Centinel* seems almost *expiring with fear*, for "*the liberty of the press*"—By his idea of the subject, one would think he had just made his escape from a *Turkish Haram*, or had been buoyed from the gloomy regions of a *Spanish mine*. It is almost impossible that a man, who was educated in any of the Christian nations of Europe, and really so, that any one, who is an inhabitant of any of the United States of America, should be ignorant that "the liberty of the press" is what the people,

for whom the late Convention were acting, look upon as a privilege, with which every inhabitant is born;—a right which Nature, and Nature's God, has given, and too sacred to require being mentioned in the national transactions of these states. Had *it* been reserved by a particular article, posterity might imagine *we* thought *it wanted* written laws for security; an idea we would not choose should disgrace the legislature of the United States. If in England, "the only operative and efficient check upon the conduct of administration is *the sense of the people at large*," what *greater* security for the "liberty of the press" would the *Centinel* wish for, than "*the sense of the people at large*" of these states.

The "*sense of the people at large*" obliges the august Emperor of China, once a year, to hold the plough[1]—the "*sense of the people at large*" obliged David, absolute monarch of Israel, to "go forth and speak comfortably to the people."[2]—*It*, in a great degree, influences the Monarch of France, and *it* has ever had great influence on the court of Great-Britain;—and when we reflect how well acquainted each member of the Convention were with "*the sense of the people at large*" of these states, is it not surprising, with what minuteness they have barred against *every encroachment* upon the liberties of the people, which would not have disgraced "*the sense of the people at large*," whom *they* represented? *No man* can possibly be admitted into Congress, unless born, or having resided within these states for a term of years sufficient for him to inform himself of "*the sense of the people at large*," for whom he is to make laws.

In art. 1, sect. 5, it is ordained, that "each house shall keep a journal of its proceedings, and, from time to time, publish the same," &c.—In the same article, sect. 7, it is ordained, "that the names of the persons voting for, and against a bill, shall be entered on the journals of each house respectively;" that those, who vote contrary to the minds [of] their constituents, may be exposed. Should Congress, *for once*, unfortunately be composed of the *Centinel's* "*aristocratical junto*," they will have but two years to abuse the confidence, which the people have placed in them, before part of "that *aristocratic junto*["] must leave the house, to make room for others, who will be a restraint upon the remainder, by retarding their iniquitous proceedings, and punctually informing their constituents of their *breach of trust*.

I believe, there is not a single article, wherein the *new plan* has proposed any amendment to the *old*, but what would be objected to by *Centinel*. To some he has objected, where they have made no amendment; as the power of Congress to try causes without a jury, which they have ever possessed.

For want of facts to allege, how sophistically does *Centinel* strive to pervert the meaning of the 6th article—when, it expressly says, that all treaties made, or which shall be made, under the authority of the United States, "shall be the supreme law of the land;"—meanly endeavouring to convey an idea to his readers, that, by granting to Congress the power of forming a constitution for making treaties, and transacting the business of the Union, which shall be "the supreme law of the land," the power of Congress must, "necessarily, absorb the state legislatures and judicatories; and that such was the contemplation of the framers of it."—An assertion as abusive to the characters who composed that truly respectable body, as impossible to be drawn from the *letter*, and evident meaning of that article.

So decided have the Convention been in not infringing upon the internal police of the states, that they ordain in art. 4, sect. 4, that Congress shall not only allow, but "shall guarantee to every state in the Union, a republican form of government," and shall support them in the same, against either external or internal opposition. But, says *Centinel*, "Congress are to have power to lay and collect taxes, duties, imposts and excises," &c.—A *great absurdity indeed*, that a body, who are under an absolute necessity of contracting debts, should be in possession of *any means* by which they can discharge them! The *Centinel* is *far* more unreasonable than were the *Egyptian* task-masters;—they demanded brick without straw; but the Israelites could, possibly, collect stubble for a substitute.[3] *He growls* that "Congress have power to lay and collect taxes, duties, imposts and excises," without providing *even stubble* for a substitute. A news-paper could not contain observations on *each* of the objections made by the *Centinel*. He says "*the sense of the people at large*," secures the liberty enjoyed by the subjects of Great Britain.—We know *it* has gained America her freedom—of which spirit he appears sensible, by quoting "the attempt of Governor Colden, of New-York, before the revolution, to re-examine the facts, and re-consider the damages in the case of *Forsey* and *Cunningham*, produced about the year 1764, a flame of patriotic and successful opposition that will not be easily forgotten["]:[4]—The cause of which opposition was, "the *patriotic flame*" which arose from among the people; since which, *that patriotic spirit* has been gaining strength by exertion, and stability by establishment:—And yet, *he* asserts that *this spirit of patriotism* will, without the least opposition, resign its liberties to Congress whenever they shall be demanded.—It would be, perhaps, the only instance in nature, wherein the effect, increasing regularly with the cause, at last, while the cause is still acting with full vigor, the effect entirely gets the better of the cause, and acts directly against it.

The *Centinel's* long and laboured harangue respecting courts of justice being appointed by Congress in each State, to try common actions of debt, &c. must be a creature of his own designing, or deluded imagination. To fix that matter beyond the reach of dispute, the new proposed plan has expressly limited the jurisdiction of Congress, as to such authority; "to exercise exclusive legislation in all cases whatever, over such districts, (not exceeding ten miles square) as may, by cession of particular States and acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State, in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, &c." The authority which the proposed plan gives to Congress, to form treaties, regulate trade, decide disputes between different States, and between individuals respecting lands &c. the *Centinel* seems either artfully, or ignorantly to suppose, they can and *will exercise*, respecting the internal police of each State.

Does the new proposed plan give Congress more power than is absolutely necessary they should possess, to enable them to act for the interest—secure the trade—protect and support the honour of the States? If not, is it not absurd to object by saying, when they are in possession of *this* they can soon gain *more*? By this rule they never must have *any*. Most people no doubt, will agree with *Centinel*, in this particular, that the freedom of a nation does not so much depend on what a piece of parchment may contain,—as their virtue,—ideas of liberty—and "*the sense of the people at large.*" It was not *Magna Charta* written on parchment, which united the English Barons to oppose King John; but, the united opposition of the Barons that *forced* from King John *Magna Charta*. Is it a sufficient reason to debar a *virtuous people* from the benefit of any laws, because perfect ones would not constitute the happiness of a *vicious people*?

When the Americans shall have lost their virtue—when those sentiments of liberty which pervade the breasts of freemen, shall cease to glow in their bosoms, *bills of right* will not secure their liberties. But whilst they practice *virtue*, and retain *those sentiments*,—from whence can a *Congress* be collected, who will *dare* infringe their liberties; or be ignorantly hardy enough to attempt "*the liberty of the press.*" Should it be thought best at any time hereafter to amend the plan; sufficient provision for it is made in Art. 5, Sect. 3, without placing ourselves in the situation of a conquered people; or being obliged, like the devoted Polanders, when divided among three powers,[5] to sue for such *conditions* as we could obtain.

Baltimore, November 8.

1. Following the teachings of Confucius, it had been the custom of the Emperor of China to turn three furrows with a plow to honor the deities of agriculture.

2. 2 Samuel 19:7.

3. Exodus 5:7–19.

4. Quoted from "Centinel" II, Philadelphia *Freeman's Journal*, 24 October (CC:190, p. 463). For the case of *Forsey* v. *Cunningham* and the issue of an appeal's court reviewing the facts from a preceding jury trial, see Milton M. Klein, "Prelude to Revolution in New York: Jury Trials and Judicial Tenure," *William and Mary Quarterly*, 3rd series, XVII (1960), 439–62.

5. In 1772, Poland was partitioned among Prussia, Russia, and Austria.

John Adams to Thomas Jefferson
London, 10 November 1787 (excerpt)[1]

. . . What think you of a Declaration of Rights? should not such a Thing have preceeded the Model?[2] . . .

1. RC, Jefferson Papers, DLC. Printed: RCS:Mass., 212 (longer excerpt); Boyd, XII, 334–35. For a longer excerpt, see CC:Vol. 2, p. 463; RCS:Mass., 212. Jefferson recorded this letter as received on 26 November in his "Summary Journal of letters" (Boyd, XII, 335n).

2. On 12 February 1788 Adams wrote: "a Declaration of Rights I wish to see with all my Heart. . . . The Press, Conscience & Juries I wish better Secured" (to Cotton Tufts, Misc. Mss., John Adams folder, NHi).

William Grayson to William Short
New York, 10 November 1787 (excerpt)[1]

. . . With respect to my own sentiments I own I have important objections:—In the first place I think liberty a thing of too much importance to be trusted on the ground of *implication*: it should rest on principles expressed in the clearest & most unequivocal manner. A bill of rights ought then to have preceded, tryals by jury should have been expressly reserved in Civil as well as Criminal cases.

The press ought to have been declared free—I think the fœderal Courts in the different states wrong. . . .

1. RC, Short Papers, DLC. Printed: CC:248 (excerpts); and Smith, *Letters*, XXIV, 550–53n. The first page of this letter was marked by Grayson: "By favor of Commodore [John Paul] Jones," who left for France the next day. The letter was endorsed by Short as received on "Dec. 21."

David Ramsay to Benjamin Rush
Charleston, S.C., 10 November 1787[1]

In this letter Ramsay suggests two different ways in which the Constitution might be amended without endangering or significantly delaying the adoption of the Constitution: (1) the state conventions could propose amendments that would be submitted to the Confederation Congress for its approval and the

adoption by the people and (2) "trust to the mode of alteration proposed in it," i.e., Article V of the Constitution.

Governor Edmund Randolph, a Virginia delegate to the Constitutional Convention, proposed the first method of amendment in the Constitutional Convention on 15 September (BoR, I, 152) and in a letter to the Virginia House of Delegates published as a pamphlet in late December 1787 (BoR, II, 211–16). Randolph said that the submission of amendments by state conventions to the Confederation Congress for its approval and then the approval by the people in a second general convention was similar to how the Second Continental Congress sent the draft Articles of Confederation to the states for their approval in which some states proposed amendments that were then considered but then rejected by Congress (CDR, 96–137n).

The Massachusetts Convention on 6 February 1788 recommended Ramsay's second method of ratifying the Constitution unconditionally but with nine recommendatory amendments to be considered by the first federal Congress under the provisions of Article V of the Constitution (BoR, I, 243–45n).

As I suppose your convention is about convening & that you are a member[2] I shall take the liberty of suggesting my wishes on the subject.

I am ready & willing to adopt the constitution without any alteration but still think objections might be obviated if the first state convention after accepting in its present form would nevertheless express their approbation of some alterations being made on the condition that Congress & the other States concurred with them. I think this would cause no delay nor would it endanger the acceptance of the constitution. If the clause which gives Congress power to interfere with the State regulations for electing members of their body[3] was either wholly expunged or altered so as to confine that power simply to the cases in which the States omitted to make any regulations on the subject, I should be better pleased. I wish also that there might be added some declaration in favor of the liberty of the Press & of trial by Jury. I assent to Mr Wilsons reasoning that all is retained which is not ceded;[4] but think that an explicit declaration on this subject might do good at least so far as to obviate objections. Should your State adopt this line of conduct (as it will doubtless take the lead) it would probably be followed by the others. The necessity of another convention would be obviated. I would not make these alterations conditions of acceptance: I would rather trust to the mode of alteration proposed in it than hazard or even delay the acceptance of the proposed plan. I think it ought to be matter of joy to every good citizen that so excellent a form of government has passed the convention. It promises security at home & respectability abroad I do not think any people could be long happy without ballances & checks in their constitutions: nor do I concieve it possible to organise a government with the three necessary checks on more unexceptionable principles out of homogeneous materials than

has been done by the convention. It is an apt illustration of the Trinity. The whole power is from one source that is the people & yet that is diversified into three modifications with distinct personal properties to each. Its origin is the voice & its end the good of the people.

1. RC, Rush Papers, PPL.
2. Rush was a member of the Pennsylvania Convention, which was scheduled to meet on 20 November.
3. Article I, section 4, clause 1.
4. See James Wilson's speech of 6 October 1787, BoR, II, 26.

Plain Truth

Philadelphia Independent Gazetteer, 10 November 1787 (excerpts)[1]

FRIEND OSWALD,

Seeing in thy paper of yesterday, twenty-three objections to the new plan of federal government, I am induced to trouble the public once more; and I shall endeavor to answer them distinctly and concisely. That this may be done with candour, as well as perspicuity, I request thee to reprint them as they are stated by "*An Officer of the Late Continental Army*," and to place my answers in the same order. . . .

"2. The powers of Congress extend to the *lives*, the *liberties* and the *property* of every citizen."

2. Is there a government on earth, where the life, liberty and property of a citizen, may not be forfeited by a violation of the laws of God and man? It is only when justified by such crimes, that the new government has such power; and all crimes (except in cases of impeachment) are expressly to be TRIED BY JURY, *in the state where they may be committed.* Art. 3. Sect. 2. . . .

"6. Congress being possessed of these immense powers, the liberties of the states and of the people, are not secured by a bill or declaration of rights."

6. Notwithstanding all that has been written against it, I must recur to friend W[ilson]'s definition on this subject.[2] A state government is designed for ALL CASES WHATSOEVER, consequently what is not reserved, is tacitly given. A federal government is expressly only for FEDERAL PURPOSES, and its power is consequently bounded by the terms of the compact. In the first case a Bill of Rights is indispensable, in the second it would be at best useless, and if one right were to be omitted, it might injuriously grant, by implication, what was intended to be reserved. . . .

"8. TRIAL BY JURY, that sacred bulwark of liberty, is ABOLISHED IN CIVIL CASES, and Mr. W[ilson], one of the convention, has told you, that not being able to agree as to the FORM of establishing this point,

they have left you deprived of the SUBSTANCE. Here is his own words—"*The subject was involved in difficulties. The convention found the task* TOO DIFFICULT *for them, and left the business as it stands.*"

8. Trial by jury has been seen to be expressly preserved in criminal cases. In civil cases, the federal court is like a court of chancery, except that it has original jurisdiction only in state affairs; in all other matters it has "appellate jurisdiction both as to law and fact, *with such exceptions and under such regulations as congress shall make.*" *Art.* 3. *sect.* 2. Nobody ever complained that trials in chancery were not by jury. A court of chancery "may issue injunctions in various stages of a cause, saith Blackstone, and stay oppressive judgment." Yet courts of chancery are every where extolled as the most equitable; the federal court has not such an extent of power, and what it has is to be always under the *exceptions and regulations of the United states in Congress.*

Friend W[ilson] has well observed that it was impossible to make one imitation of thirteen different models, and the matter seems now to stand, as well as human wisdom can permit.

"9. THE LIBERTY OF THE PRESS is not secured, and the powers of Congress are fully adequate to its destruction, as they are to have the trial of *libels*, or *pretended libels* against the United States, and may by a cursed abominable STAMP ACT (as the *Bowdoin administration* has done in Massachusetts) preclude you effectually from all means of information. *Mr. W[ilson] has given you no answer to these arguments.*"

9. The liberty of the press in each state, can only be in danger from the laws of that state, and it is everywhere well secured. Besides, as the new congress can only have the defined powers given, it was needless to say anything about liberty of the press, liberty of conscience, or any other liberty that a freeman ought never to be deprived of. It is remarkable in this instance, that among all the cases to which the federal jurisdiction is to extend *(Art.* 3*)* not a word is said of "*libels or pretended libels.*" Indeed in this extensive continent, and among this enlightened people, no government whatever *could* controul the press: For after all that is said about "balance of power," there is one power which no tyranny on earth could subdue if once roused by this great and general grievances, that is THE PEOPLE. This respectable power has preserved the press in Great Britain in spite of government; and none but a madman could ever think of controlling it in America.

"10. Congress have the power of keeping up a STANDING ARMY in time of peace, and Mr. W[ilson] has told you THAT IT IS NECESSARY."

10. The power here referred to is this, "to raise and support armies, *but no appropriation of money to that use shall be for a longer term than two*

years."—*Art.* I, *sect.* 8. Thus the representatives of the people have it in their power to disband this army every two years, by refusing supplies. Does not every American feel that no standing army in the power of congress to raise, could support despotism over this immense continent, where almost every citizen is a soldier? If such an apprehension came, in my opinion, within the bounds of possibility, it would not indeed become my principles to oppose this objection. . . .

"21. The MILITIA is to be under the immediate command of Congress, and men *conscientiously scrupulous of bearing arms,* may be compelled to perform military duty."

21. Congress may "provide for *calling forth* the militia," "and may provide for organizing, arming and disciplining it."—But the states respectively can only *raise it,* and they expressly reserve the right of "appointment of officers and of training it."—Now we know that men conscientiously scrupulous by sect or profession are not *forced* to bear arms in any of the states, a pecuniary compensation being accepted in lieu of it.—Whatever may be my sentiments on the present state of this matter is foreign to the point: But it is certain that whatever redress may be wished for, or expected, can only come from the *state Legislature,* where, and where only, the dispensing power, or enforcing power, is *in the first instance* placed. *Article* [I], section 8. . . .

Thus I have answered all the objections, and supported my answers by fair quotations from the new Constitution; and I particularly desire my readers to examine all the references with accurate attention. If I have mistaken any part, it will, I trust, be found to be an error of judgment, not of will, and I shall thankfully receive any candid instruction on the subject.—One quotation more and I have done. "In all our deliberations on this subject (saith George Washington) we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the constitution which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable."[3]

1. This reply was dated, "Philadelphia, November 7, 1787." It was reprinted in the *Carlisle Gazette,* 21 and 28 November, and in the November issue of the Philadelphia *American Museum.* For the entire essay, see RCS:Pa., 216–23.

2. See James Wilson: Speech in the Pennsylvania State House Yard, 6 October 1787 (BoR, II, 25–28).

3. The President of the Convention to the President of Congress, 17 September 1787 (BoR, I, 606).

"R.S."

Pennsylvania Herald, 10 November 1787

To the EDITOR of the PENNSYLVANIA HERALD.

SIR, The most repeated, and certainly the most substantial, charge against the proposed constitution, is the want of a bill of rights. But as our ideas upon the subject are borrowed from Britain, it would not be amiss to recollect the manner in which the celebrated bill of rights of that nation was introduced and adopted. The constitution of England had certainly been established before the interference of the Prince of Orange, before the reign of Charles the first, and even before the reigns of Henry and his father John, for the bill of rights, the petition of rights, and the great charter itself are admitted by the best writers to be only formal acknowledgements of the pre-existing liberties of the people; or, as Lord Coke observes with respect to Magna Charta, "they contained very few new grants, but were for the most part declaratory of the principal grounds of the fundamental laws of England."[1] It was only a deviation from the constitution then, which rendered it necessary to instruct the rulers of the land, by those memorable instruments, in the antient privileges of the subject; and the manner of doing this in the last case, which is the most applicable to our present circumstances, will perhaps furnish a profitable lesson. The bill of rights was a solemn declaration, which the *Lords and Commons* delivered to the Prince and Princess of Orange, a short time before they were invested with the sovereign authority. Merely as a declaration of the Lords and Commons, it was not considered as conclusive, for we find that the 2d statute passed after William and Mary became King and Queen, was made in order to recognize that declaration, enacting "all and singular the rights and liberties, asserted and claimed therein to be the true, antient, and indubitable rights of the people."

To apply this proceeding to the case now agitated in America:

The president, senate, and house of representatives are to be chosen either directly by the people, or indirectly by their representatives. From the persons *first* appointed to fill those important departments of the federal government, there will be no reason to apprehend the malpractices which, it is said, the constitution tends to encourage and tolerate by eventually establishing an aristocratic influence. It is in the power of the states individually (though they cannot individually frame a bill of rights for their sister sovereignties) to instruct and enjoin their representatives to the Congress, to propose and support a law declar-

atory of the liberties of the people, and this law will place the federal bill of rights of the United States, upon the same footing with the British bill of rights, which we take for our model. I have not stated these points with any arrogant view of recommending the principle they contain to the adoption of the people, but merely as the sentiments of a citizen who wishes well to his country.

1. See Blackstone, *Commentaries*, Book I, chapter 1, pp. 123–24.

"G."

Pittsburgh Gazette, 10 November 1787 (excerpt)[1]

. . . With respect to the constitution lately formed by the delegates from twelve of the United States, it meets my hearty approbation, and notwithstanding the literary address of the sixteen seceding members,[2] I am persuaded it will, if adopted, tend greatly to the happiness and prosperity of America in general. Numbers of people I am told are proposing alterations and amendments in order that the ensuing convention may urge them as parts of the federal constitution. Such conduct cannot originate with persons, who have read or considered the words of the constitution, &c. It must either be ratified or rejected just in the form it is, subject nevertheless at a future day to amendments and alterations at the pleasure of the legislatures of the several states, as prescribed in the fifth article of the constitution, which says, that two-thirds of both houses of Congress may propose amendments, or on application of two-thirds of the legislatures of the states, Congress shall call a convention for proposing amendments to the Congressional constitution, and whenever such amendments are ratified by the legislatures of three fourths of the several states, or conventions in three-fourths, such amendment or amendments are to become valid as part or parts of the Congressional constitution. The weakness and absurdity of proposing amendments at this time is a glaring inconsistency, and would tend to destroy the very constitution altogether. If the electors in the several counties throughout the United States, are *all* of them to propose amendments, I should not be much surprised to hear it formed with such a host of amendments, a jargon of absurdities, as confused and unintelligible as the clashing of tongues at the building of Babel.[3]

November 6, 1787.

1. For the entire essay, see RCS:Pa. Supplement, 550–52.
2. For the address of the seceding Pennsylvania assemblymen, see BoR, II, 16–17.
3. For the tower of Babel, see Genesis, 11:1–9.

Massachusetts Centinel, 10 November 1787[1]

Says a correspondent—

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 publick 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 honour of proposing *the first publick act*, by which any nation has ever *divested itself* of a power, every exercise of which is *a trespass on the Majesty of Heaven.*

The old federal constitution contained many of *the same things*, which from errour 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.*

The people will remain, under the proposed constitution, *the fountain of power and publick honour.* 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, will be firmly guaranteed to them under the state constitutions which they respectively approve; for THEY *cannot* be royal forms, *cannot* be aristocratical, but *must* be republican.

Nothing can be more plain to the eye of reason—or more true, than that the SAFETY of the people is amply provided for in the Federal Constitution, from the restraints imposed on the President—those imposed on the Senate—and from the nature of the House of Representatives—and that of the *security* for national safety and happiness, from every part of the Federal Government.

There is no spirit of arrogance in the New Federal Constitution. It addresses us with becoming modesty, admitting that it *may* contain errours. Let us, fellow citizens, give it a trial: and when *experience* has taught its mistakes, THE PEOPLE, WHOM IT PRESERVES ABSOLUTELY ALL-POWERFUL, can reform them.

1. Reprinted: *New Hampshire Recorder*, 27 November.

Portius

Boston American Herald, 12 November 1787 (excerpt)[1]

To the PEOPLE *of* MASSACHUSETTS.

The time is fast approaching, when you are to decide on the most important question that ever fell to the lot of humanity to determine upon.—TIME, which is on the wing, will speedily introduce the second Wednesday of January next, a day which will never be forgotten[2]—a day big with the fate of, perhaps the rights, properties and privileges of the citizens of this Commonwealth—a day, on the events of which, depends the *interest*, not only of each individual in this Commonwealth, but of their posterity to the latest generation.—And no doubt you will receive either the blessings or the curses of all your unborn posterity, according as you decide, either in favour or against the all important question then to be determined on.[3]

Of what importance then is it, that you previously examine the matter fully; that you duly consider the propriety of the part you then propose to take? You will undoubtedly take the *advantages* which will accrue to you as a people, by the adoption of the proposed Constitution, and put them in *one* scale, and the *disadvantages* you will put in the *other*, and as the preponderation of either scale appears, your conduct will be according.

A subject of such vast magnitude should be taken up with all the cool, dispassionate deliberation the mind of man is capable of: Every thing therefore which has a tendency to raise the passions, or inflame the mind should studiously be avoided, both in our *mental* deliberations, and in our discourses *with*, and communications *to*, others; and wherever this is wanting, we run the greatest danger of forming a wrong determination within ourselves, as well as injuring those we have communication with, and we should do well to remember that it is ten to one if we make use of such means with others, but we shall injure that cause which we wish to support.

As a free member of a free community, I have offered the foregoing observations to my fellow-citizens, and I pray the candid attention of the public to the following observations on the proposed Constitution, and only wish they may be considered with the same candour with which they are offered.

I shall begin my observations with that which I conceive every Constitution should begin with, viz. a *Bill* of *Rights*; this we search for in vain in the proposed Fœderal System.

When the proposed System came first to my hands, I made diligent search for that article, but searched to no purpose; why it was omitted was a question of too delicate a nature for me to determine. Since which I have been informed that it was omitted for *two reasons*, the first of which was, "The Congress could exercise no powers, but what were expressly delegated to them, in the Fœderal Constitution, which made a Bill of Rights wholly unnecessary."

However true this objection is, it will apply with equal force to any Constitution whatever; we will take for example the Constitution of this Commonwealth, where we shall find the powers by it vested in the General Court as particularly defined, as those with which Congress is proposed to be vested with, are in the Fœderal Constitution,—yet it was deemed *absolutely* necessary, that our State Constitution should be prefaced with an unalterable Bill of Rights; and I could wish that my fellow-citizens would consider, before they give their decisive determination, whether they have any kind of reason to view a Bill of Rights less necessary *now* than *seven years* ago.—The other reason which has been alledged why a Bill of Rights was *needless* in the Fœderal Constitution, is because "each State has a Bill of Rights of its own," which would be a sufficient safe-guard and protection to its liberties.

This at first blush appears to have a considerable degree of *plausibility* in it: But that plausibility, I think, will vanish if we attend seriously to the matter as precipitately as darkness from before the rays of the sun:—*The Bill of Rights* of this Commonwealth 'tis true is a mound insurmountable by their own legislature, but it is no *barricade* against the operations of a Fœderal Government.

Our Bill of Rights is a rule of conduct to no body but our own rulers and our own citizens, any more than the other parts of our Constitution, or the Acts of our Legislature are: How *insignificant* then is the last excuse for omitting a Bill of Rights in the Fœderal System of Government!

The good people are therefore only desired to consider this simple question, *Is a Bill of Rights necessary in a System of Government? . . .*

1. The full essay is printed in RCS:Mass., 216–20n. Reprinted: Providence, R.I., *United States Chronicle*, 29 November. The *Chronicle* reprinting was prefaced with this statement by "A Friend to the Confederation": "I have read the Pieces in your last, under the signature of *Publius*; and altho' I do not agree with him in Opinion concerning the new Constitution, yet I cannot help being pleased with the candid Manner in which he has treated the Subject:—It is the only Way we can come at the Truth—the Ravings of intemperate Zeal will answer no good Purpose, and therefore I wish not to see them published. The following Piece from a late Boston Paper, as it appears to be written without Party Heat, claims a Place in your useful Chronicle,—your inserting it will oblige at least one of your Readers."

2. The second Wednesday in January 1788 was the ninth, the day the state Convention was scheduled to convene.

3. Compare this statement with George Washington's last circular to the states in June 1783. The Providence, R.I., *United States Chronicle* reprinted the circular on 15 March 1787 (CC:4). See the similar statement on p. 64 of CC:Vol. 1.

James White to Governor Richard Caswell
New York, 13 November 1787 (excerpt)[1]

. . . While I am writing to your Excellency at a time that all minds, & all conversations are turned towards the interesting question of changing the fœderal system it may be expected from every one who is honored with the public confidence to shew some attention to that subject. But the gentlemen of the late delegation are so lately returned, as are also those who assisted at the convention, that I conceive it unnecessary to be very particular.[2] Yet, as those who have been the most conversant with the subject appear to me to be the most convinced of the necessity of an efficient fœderal government; I feel myself disposed to remark, that "no system could be framed which a spirit of doubt, & jealousy, might not conceive to be fraught with danger: that this over-cautious temper may be pushed to excess, I think I may be excused if I cite our present confederation in evidence." I must in candor confess, that I have regretted that the proposed constitution was not more explicit with respect to several essentials: but the great clamor is, that no express provision is made for the TRYAL BY JURY, and LIBERTY OF THE PRESS; things so interwoven with our political, or legal ideas, that I conceive the sacred immutability of these rights to be such, as never to have occurred as questionable objects to the convention. And can it indeed be supposed, that three distinct branches, originating from, & returning to the people, will combine to invade these inviolable first principles? Or would they expect to do it with impunity? The apprehension wears too pusilanimous a complexion. Whatever may be our wish in theory, we find in practice, by our own example, that states in confederacy, like individuals in society, must part with some of their privileges for the preservation of the rest. In proof of which, it cannot be denied that, for want of attention to, or knowledge of that maxim, these states are now tottering on the brink of anarchy.

1. RC, Gratz Collection, Old Congress, PHi. Printed: Smith, *Letters*, XXIV, 554–55. Caswell endorsed the letter as received on 26 November and as answered on 30 November.

2. White refers to North Carolina's delegates to Congress and to the Constitutional Convention. For the report of the Convention delegates dated 18 September, see RCS: N.C., 5–7.

One of the Late Army
Philadelphia Freeman's Journal, 14 November 1787

"*A Citizen of America*" has published four letters or *rhapsodies*, on the proposed federal constitution.[1] The apparent moderation of this writer induced me to give the first an attentive perusal: curiosity carried me through the rest.

Regardless of the arguments which rise up in judgment against him, this writer treats the public judgment, like a child; instead of solid nourishment he offers it *pap*. The proposed new government is his theme; indirect and general terms content him towards its support, and, in the excess of his wisdom, he kindly and often tells us *what it is not*. But, dear doctor of politics, it is unfortunate for you, that there are citizens among us in the stubborn habit of thinking for themselves. Sophistical arts, however smooth and insinuating, must give way to *their* more able heads and honest hearts. Thy favorite constitution is not so perfectly sound in their eyes. They discover in it the seeds of disorder—and sooner or later it must yield to an incurable distemper, fatal to the liberties of their posterity, and of thy own. This American citizen (alas! such citizens there are in the best countries) this political Esculapius, so far forgets the point of *delusion*, as openly to insult the good sense of the public. As if the deed was already done he tells us "the *old constitution contained* many of the same things, which from error, or disingenuousness, are urged against the *new one*." But, gentle reader, hear the proof!—"*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.*"—What effrontery!—Will this writer please to point out the similarity between the two systems upon which he founds this extraordinary observation? Has he reflected that they are wholly different—that the one did not require a *Bill of Rights*,[(a)] while the other, if adopted, renders this palladium of our unalienable privileges indispensibly essential? Or is the mere omission of it, under one government, an argument for forgetting it in another? O! the depravity of some minds! Has this sophistical writer so soon forgotten that *sweeping* clause (as it has been judiciously termed) which places the authority of Congress *paramount* in all respects to the constitution and laws of every state? Will he dare to say that under this unlimited supreme authority of Congress any *Bill of Rights* is sacred, or that the LIBERTY OF THE PRESS is secure?

With respect to the charge of *disingenuousness*, I would answer in the words of St. Luke—"Thou hypocrite, cast out first the beam out of

thine own eye, and then shalt thou see clearly to pull out the mote that is in thy brother's eye."[2]

(a) *See the Articles of Confederation, which* guarantee *to the several states their rights.*

1. A reference to the four essays written by Tench Coxe under the pseudonym "An American Citizen" (CC:100, 109, 112; BoR, II, 56–58) and published on 26, 28, 29 September, and 21 October.

2. Luke 6:42.

Vox Populi

Massachusetts Gazette, 16 November 1787 (excerpt)[1]

I could wish to stop here, and proceed no further, but I must renew my address to the publick's indulgence for liberty to make another address to my fellow-citizens, which is for them to consider, how it comports with policy for them to establish a system of government entirely disconnected with a *bill of rights?*

I long sought for the reason why a bill of rights was omitted; at last I had the two following reasons assigned *viz.* first, *as the powers proposed to be vested in Congress were definite no bill of rights was necessary, for they could exercise no power but what is expressly given them by the constitution. The* other reason is, *because each state has a bill of rights of its own, a federal bill of rights must be wholly useless.*

With regard to the first, it will apply with equal force to any constitution of government extant; we will take our own state's for instance, where we shall find the powers vested in the General Court are as *definite* as those proposed to be vested in Congress; yet, when the constitution was formed, it was deemed absolutely necessary that the people should be protected by an *explicit unequivocal bill of rights*, and the publick are desired to consider whether *that* was a piece of ill-judged policy or not; and if it was not, whether the *nature of things* has so changed since as to render it needless.

The second reason given why it was omitted, I think cannot have much greater force than the former; we may as well say, that because each state has a *constitution* of its own, that a continental constitution was unnecessary, as to say that because we have a *state* bill of rights a *continental* one is unnecessary. But let us consider what is our bill of rights, and what was its original design. If we consider its nature, we shall find it was constructed as a barricade to prevent our own General Court from infringing on certain rights which the people did not mean should be at the disposal of the legislature, and is simply a rule of conduct for our legislature. But what will Congress have to do with *our*

bill of rights, any more than they will with the *rest* of our constitution? Will any person suppose that the *other parts* of our constitution will be any rule of *their* conduct? I should imagine if they do, it will curtail some part of the powers which it is meant, by the proposed constitution, they should exercise.

The virtuous and enlightened citizens are requested to pay that attention to this matter which the importance of its nature demands, and act thereon the part which to them shall appear becoming free men, who have hazarded their lives and fortunes to establish a government founded on the principles of genuine civil liberty and *undefiled republicanism*. . . .

1. The full essay is printed in RCS:Mass., 251–54. This essay is a continuation of "Vox Populi," 13 November (RCS:Mass., 222–25).

Philadelphia Freeman's Journal, 21 November 1787[1]

Extract of a letter from Queen Anne's county,
(Maryland) *November* 12.

"You tell me of the beauties of the new constitution, and that great part of your state are for adopting it,—but this is quite different with our people; nobody now supposes that it will go down in this state, without a bill of rights, and very material alterations. You say, that General Washington's name will force it down in all the states—but you are as much mistaken in that, as I was: I find that our southern states are clearer on this head than any other, that the greatest names ought not to prejudice any man in such an important business; but you will say to this, that the greatest prophet has no honor in his own country.[2] I am often told, when I am arguing with them, that the general would not wish people to adopt it because his name is prefixed to it, and some have told me that the General, Mr. Franklin, and some others, did only sign as witnesses, and that they had no hand in forming it; I have shewn these people Mr. Wilson's speech[3] which you sent me, but I find it does not answer here—pray send me some good, sound, plain, argumentative pieces, for I am looked very slyly at frequently, and I am afraid that there must be some cause for it. Please inform me how I shall get over this sweeping clause, as they call it, *viz.*—'That the constitution and laws of Congress are to have the power of regulating every thing in the state, and to be the supreme law of the land, any thing in the constitutions or laws of any of the states to the contrary notwithstanding;'[4] for in their arguing for a bill of rights they always throw up this in the way, among other objections. Every body I see from Virginia, informs me, that all is going against us all over that state, and they tell

me, that there has been a trial of the proposed plan in a court-house there; when the business of the court was over, the lawyers divided themselves for and against, judges and jury were appointed, when, after several hours debating on both sides, before hundreds of people, the jury, without going out of court, gave their verdict against it unanimously.''

1. This item was reprinted in the *New York Packet*, 27 November; Massachusetts *Salem Mercury*, 4 December; Baltimore *Maryland Gazette*, 7 December; Boston *American Herald*, 10 December; and Poughkeepsie, N.Y., *Country Journal*, 12 December.

2. John 4:44. ''For Jesus himself testified, that a prophet hath no honor in his own country.''

3. For James Wilson's speech of 6 October 1787, see BoR, II, 25–28.

4. See Article VI, section 8, clause 18, of the U.S. Constitution (BoR, I, 611).

Algernon Sidney

Philadelphia Independent Gazetteer, 21 November 1787 (excerpt)[1]

. . . It is said ''the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish.'' Art. 3, sect. 1. The judicial power is to extend ''to controversies in 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 and the citizens thereof.'' In all these cases it is said ''the supreme court shall have appellate jurisdiction BOTH AS TO LAW AND FACT, with such exceptions and under such regulations as the Congress shall make.'' Art. 3, sect. 2. If any one should write a manly and spirited essay upon the errors of government, this will be deemed a controversy with the United States, or a state and the continental court, and not a jury of his peers, will destroy him as they please. Notwithstanding all the sophistry therefore of the most ingenious lawyers, it must appear indisputable to every impartial man of good understanding, that the trial by jury in some cases, and the liberty of the press are not TO BE RESERVED BUT TO BE GIVEN AWAY. It is declared by the English magna charta, that no man shall be in any manner destroyed, ''without the legal judgement of his peers.'' But here we have no magna charta to which we can appeal, but every thing will be uncertain, and as it has been well observed, misera est servitus ubi jus est vagum.[2] It will avail but little to say we are protected from the tyranny of government by being allowed the trial of jury in criminal cases. It requires but small knowledge of the law, to be convinced that a citizen or a subject can be sufficiently ruined by a government, by

being harrassed with civil causes. He may be fined, he may be imprisoned, and where he may be thus punished without discretion or mercy, life is scarcely worth the holding back from the oppressor. . . .

1. Reprinted: Philadelphia *Freeman's Journal*, 20 February 1788. For the full essay, see RCS:Pa. Supplement, 575–79.

2. Latin legal term often used with "aut incertum" at the end: it is a miserable slavery where the law is vague or uncertain.

Atticus III

Boston Independent Chronicle, 22 November 1787 (excerpts)[1]

. . . Yet the Hon. E. G. has reasons on which his objections are founded, to be divulged when he shall return to Massachusetts.[2] If reasons he hath, by all means let us hear them; and let us confront them by better reasons, if we can.

The Hon. E. G. and others, complain, that the system has not the security of *a bill of rights*. That series of propositions commonly called *a bill of rights*, is taken out of law-books, and is only an extract of the rights of persons.—Now let us suppose, that it stands in a law-book, which is appealed to, as an authority, in all the Courts of judicature, or is tacked (without pains or penalty annexed to the violation of it) as a preface to the Constitution. In which case is it likely to afford the greatest security to the rights of persons? Let the unbiassed judge. On this point we may appeal to fact. There is a Commonwealth, with which we are not wholly unconnected, which hath a bill of rights prefixed to its Constitution. Yet ask those of either of the great parties, into which that State hath lately been divided, if this bill of rights hath not been frequently violated? If you confide in the zealots of each party, will you not be ready to conceive, that the actual Legislators have had as poor an opinion of the bill of rights, as Cromwell had of Magna Charta? If you speak to the moderate men in that same State, they will perhaps shrug their shoulders, and shake their heads, and give you *no answer*.

When the powers to be exercised, under a certain system, are in themselves consistent with the people's liberties, are legally defined, guarded and ascertained, and ample provision made for bringing to condign punishment all such as shall overstep the limitations of law,—it is hard to conceive of a greater security for the rights of the people. . . .

Should it be received as it now stands, it is suggested "that our liberties *may* be lost." The caution expressed in the word *may*, is commendable, because many persons whose abilities the modesty of Hon. E. G. would not suffer him to undervalue, think quite otherwise. Too,

too long it hath been the humour of our countrymen, to be so fearful of giving their rulers power to do hurt, that they never have given them power to do good. *This is the very reason why the public authority, hath been so much despised by the people; and why the people have so little attachment to their civil institutions. . . .*

1. The full essay is printed in RCS:Mass., 296–300n.

2. In his letter of 18 October to the Massachusetts General Court, Elbridge Gerry gave an outline of his objections to the Constitution, indicating that he would give his full objections to the legislature when he returned to Boston (BoR, II, 50–52). "Atticus" saw the letter in the 8 November issue of the Boston *Independent Chronicle*.

A Countryman II
New Haven Gazette, 22 November 1787[1]

To the PEOPLE *of* Connecticut.

It is fortunate that you have been but little distressed with that torrent of impertinence and folly, with which the newspaper politicians have overwhelmed many parts of our country.

It is enough that you should have heard, that one party has seriously urged, that we should adopt the *New Constitution* because it has been approved by *Washington* and *Franklin*: and the other, with all the solemnity of apostolic address to *Men, Brethren, Fathers, Friends and Countrymen*, have urged that we should reject, as dangerous, every clause thereof, because that *Washington* is more used to command as a soldier, than to reason as a politician—*Franklin* is *old*[2]—others are *young*—and *Wilson* is *haughty*.[3] You are too well informed to decide by the opinion of others, and too independent to need a caution against undue influence.

Of a very different nature, tho' only one degree better than the other reasoning, is all that sublimity of *nonsense* and *alarm*, that has been thundered against it in every shape of *metaphoric terror*, on the subject of a *bill of rights*, the *liberty of the press, rights of conscience, rights of taxation and election, trials in the vicinity, freedom of speech, trial by jury*, and a *standing army*. These last are undoubtedly important points, much too important to depend on mere paper protection. For, guard such privileges by the strongest expressions, still if you leave the legislative and executive power in the hands of those who are or may be disposed to deprive you of them–you are but slaves. Make an absolute monarch—give him the supreme authority, and guard as much as you will by bills of right, your liberty of the press, and trial by jury;—he will find means either to take them from you, or to render them useless.

The only real security that you can have for all your important rights must be in the nature of your government. If you suffer any man to

govern you who is not strongly interested in supporting your privileges, you will certainly lose them. If you are about to trust your liberties with people whom it is necessary to bind by stipulation, that they shall not keep a standing army, your stipulation is not worth even the trouble of writing. No bill of rights ever yet bound the supreme power longer than the *honey moon* of a new married couple, unless the *rulers were interested* in preserving the rights; and in that case they have always been ready enough to declare the rights, and to preserve them when they were declared.—The famous English *Magna Charta* is but an act of parliament, which every subsequent parliament has had just as much constitutional power to repeal and annul, as the parliament which made it had to pass it at first. But the security of the nation has always been, that their government was so formed, that at least *one branch* of their legislature must be strongly interested to preserve the rights of the nation.

You have a bill of rights in Connecticut (i.e.) your legislature many years since enacted that the subjects of this state should enjoy certain privileges.[4] Every assembly since that time, could, by the same authority, enact that the subjects should enjoy none of those privileges; and the only reason that it has not long since been so enacted, is that your legislature were as strongly interested in preserving those rights as any of the subjects; and this is your only security that it shall not be so enacted at the next session of assembly: and it is security enough.

Your General Assembly under your present constitution are supreme. They may keep troops on foot in the most profound peace, if they think proper. They have heretofore abridged the trial by jury in some causes, and they can again in all. They can restrain the press, and may lay the most burdensome taxes if they please, and who can forbid? But still the people are perfectly safe that not one of these events shall take place so long as the members of the General assembly are as much interested, and interested in the same manner as the other subjects.

On examining the new proposed constitution, there can not be a question, but that there is authority enough lodged in the proposed federal Congress, if abused, to do the greatest injury. And it is perfectly idle to object to it, that there is no bill of rights, or to propose to add to it a provision that a trial by jury shall in no case be omitted, or to patch it up by adding a stipulation in favor of the press, or to guard it by removing the paltry objection to the right of Congress to regulate the time and manner of elections.[5]

If you can not prove by the best of all evidence, viz. by the *interest of the rulers*, that this authority will not be abused, or at least that those powers are not more likely to be abused by the Congress, than by those

who now have the same powers, you must by no means adopt the constitution:—No, not with all the bills of rights and all the stipulations in favour of the people that can be made.

But if the members of Congress are to be interested just as you and I are, and just as the members of our present legislatures are interested, we shall be just as safe, with even supreme power, (if that were granted) in Congress, as in the General Assembly. If the members of Congress can take no improper step which will not affect them as much as it does us, we need not apprehend that they will usurp authorities not given them to injure that society of which they are a part.

The sole question, (so far as any apprehension of tyranny and oppression is concerned) ought to be, how are Congress formed? how far are the members interested to preserve your rights? how far have you a controul over them?—Decide this, and then all the questions about their power may be dismissed for the amusement of those politicians whose business it is to catch flies, or may occasionally furnish subjects for *George Bryan's* POMPOSITY,[6] or the declamations of *Cato—An Old Whig—Son of Liberty—Brutus—Brutus junior—An Officer of the Continental Army*,—the more contemptible *Timoleon*[7]—and the residue of that rabble of writers.

1. Reprinted: *New York Journal*, 3 December; *New Jersey Journal*, 5 December; *Pennsylvania Gazette*, 26 December; *Massachusetts Gazette*, 11 January 1788. The last paragraph alone was reprinted in the *New Hampshire Spy*, 1 January 1788. For the authorship by Roger Sherman and circulation of "A Countryman," see CC:261.

2. See "Centinel" I (CC:133, p. 330; and BoR, II, 21–25).

3. For attacks upon James Wilson, see "Centinel" II and "An Officer of the Late Continental Army" (BoR, II, 60–64, 91–94).

4. See "An Act containing an Abstract and Declaration of the Rights and Privileges of the People of this State, and securing the same" (BoR, I, 63–64).

5. Article I, section 4, clause 1 of the Constitution.

6. George Bryan was thought to be the author of the "Centinel" essays (CC:133).

7. None of the Antifederalist writings listed here was reprinted in Connecticut before "A Countryman" II appeared on 22 November. All of them, however, were printed or reprinted in New York City and were probably circulated in Connecticut by New York Antifederalists. (See CC:283.)

A Plain Citizen: To the Honorable the Convention of the State of Pennsylvania, Philadelphia Independent Gazetteer 22 November 1787 (excerpt)[1]

. . . An idea has been held out by some, who, perhaps may be well-meaning people, that the different state Conventions may alter and amend the constitution at pleasure. As this mistaken notion will, probably, be carried, by some members, into your honorable house, permit me to bestow a few remarks upon it—

That the Convention have given no power to the citizens of any state to make the smallest alteration in the proposed plan of government, is an incontrovertible fact; well knowing, that the different states, unless when convened together, can never be unanimous in any thing: This is evident from the contempt with which many of them have, from time to time, treated the requisitions of Congress. When the impost was required, it was only granted by some of the states, and that upon such terms as each of them pleased.[2] Is there, then, the smallest probability that the alterations, which might please any particular state, would be accepted by the others? Certainly, there is not.

If one state has a right to propose amendments, so have the other twelve; supposing them all to enjoy and exercise this privilege, in its utmost extent, what would be the consequence? The petty interests of a single state, not the welfare and happiness of the union, would predominate in each State-Convention; so that, instead of the present regular and federal plan, we should have a parcel of narrow, partial, and illiberal proposals, jumbled together in one confused chaos, which would require no less than the omnipotent *fiat* of Jehovah, to reduce them to order, or to consistency with each other.

I conceive, with due submission to your wisdom, that the chief object you are to consider, is, whether it will be more conducive to the happiness of your country to adopt the proposed Constitution, as it is, or to reject it, and continue to encounter all the evils with which we are beset, under the present confederation—And, here, you have many powerful incentives to urge the adoption of the new plan.

Our situation is truly alarming, and not to be trifled with; liberty, in these states, has been changed into licentiousness, and this, if some remedy be not speedily adopted, cannot fail to shackle the free-born sons of America with the chains of slavery. I repeat it; unless a firm federal government shall be immediately established, slavery is inevitable. The people are distressed beyond measure; their patience is nearly exhausted; and they are now as anxious to get rid of the present form of federal government, as they formerly were to shake off the yoke of Britain.

Is there not reason, then, to fear that if the proposed constitution shall be rejected, they will enrol themselves under the banners of some enterprizing ruffian, and, at one bold stroke, annihilate all government, and introduce anarchy into these states? Should this ever be the unhappy fate of our country, liberty must take her flight from amongst us never, never to return again, and we must become the abject slaves of some hardy villain, who will give us a government and laws, at the

point of the bayonet. May Heaven guide *your* councils and avert the impending danger.

Nor are these groundless chimeras of a disturbed brain. Let any man reflect coolly upon the situation of Massachusetts last winter[3] and of Pennsylvania, at the present moment; let him enquire into the sentiments of the people in general, who have long murmured against the present plan of government, and look up to the proposed Constitution, as the only relief for all their calamities. I say, let him weigh well these circumstances, and declare, if he can, that my apprehensions are vain.

It has been suggested, that another Federal Convention should be called, to revise the proposed plan of government.[4] To this, it is sufficient to answer that a considerable time would be required to carry it into effect, and that, in the meantime, the popular frenzy might rise to extremes, and be productive of the most serious consequences. Besides, it is by no means probable, that men, of sufficient prudence and abilities, would be found, hardy enough, to undertake the task, after the virulence, and scurrility, the worthy members of the late Convention have experienced; not even the illustrious SAVIOR OF HIS COUNTRY has been exempted from the most illiberal torrents of abuse, that envy or malice, could suggest.

In short, gentlemen, I hope you will find many urgent reasons for ratifying the new constitution. If it should even be found imperfect in some particulars, I trust you will nevertheless adopt it, when you consider, that the members of Congress, under this constitution, will represent the people more effectually than even the members of the late Federal Convention; and may be instructed, by their constituents, to make such alterations and amendments in it, as may be found expedient, still further to secure the blessings of liberty to America; which, when ratified by the people, as in the present instance, shall become a part of the federal constitution. The members, who shall be first chosen, under the new plan, may be instructed, for this purpose, by the people, if found necessary. That real patriotism, and wisdom, may guide your councils, is the sincere wish of

A PLAIN CITIZEN.

1. For the entire essay, see RCS:Pa., 289–92. "Plain Truth," Philadelphia *Independent Gazetteer*, 24 November (RCS:Pa., 292–93), implies that James Wilson was "A Plain Citizen."

2. For the stipulations put on the state ratifications of the Impost of 1783, see "The Incorporation of State-Guaranteed Rights unto the Confederation Government, 1783–1786," BoR, I, 138–41.

3. A reference to Shays's Rebellion.

4. See "Centinel" I, 5 October, and "An Old Whig" IV–V, 27 October and 1 November, BoR, II, 21–25, 70–72, 87–90.

Truth

Massachusetts Centinel, 24 November 1787[1]

Mr. RUSSELL, The following ADVANTAGES which every *honest man* is convinced must result from the adoption of the proposed Constitution, have not been distributed in "hand-bills, nor posted up in every part of the town"—but they are *deeply impressed* on the minds of *every* class of citizens in this metropolis.

1st. The almost annihilated trade of this town, designed by the author of nature to be an emporium of wealth from all parts of the globe, *revived, invigorated* and *expanded* to all quarters of the earth.

2d. The *encouragement* of *agriculture* by this means, and the *produce* now rotting on the farmer's hands, finding ready vent, and an adequate price.

3d. Every spring set in motion, by the innumerable avenues of business that will open upon us, and the present indolence, dissoluteness and ritiousity of manners done away.

4th. An abolition of *sinecures, abilities* brought forward in the publick service—men for offices, not offices for men.

5th. An *army* and a *navy* if necessary, to vindicate the rights of America—in all quarters of the globe.

6th. Boston emerging from her present depressed situation—and feeling her former importance in the general scale.

7th. The wealthy confiding in the honour and justice of the government—*loaning* the surplus of their riches upon reasonable terms—encouraging ARTS, MANUFACTURES and COMMERCE—while rates, taxes and rents, are daily diminishing.

8th. FREEDOM of *speech, writing, publishing* and *printing*, throughout the States; for a Republican Constitution is sacredly guaranteed to them all.

9th. All our *courts, laws, judges, juries, customs*, &c. &c. confirmed by the above article.

10th. HABEAS CORPUS necessarily retained, except in such cases as our own Constitution warrants its suspension.[2]

11th. *Representatives chosen in such manner*, as may enable them to render substantial services to their country.

12th. All the State *Bills of Rights* confirmed.

13th. RELIGION left to its guardian God—all *tests, oaths*, and *hamperings of the conscience* of our fellow men entirely done away.

These reasons and millions of others, evince the *perfection* of the proposed Constitution, and ensure its cordial adoption, if common sense and common honesty have not forsaken the majority of the people.

1. Reprinted: Northampton, Mass., *Hampshire Gazette*, 5 December. The *Centinel* printed "Truth" under the heading "FEDERAL." It was followed by "John Humble, Address of the Lowborn" from the Philadelphia *Independent Gazetteer*, 29 October (RCS:Pa., 205–6), which the *Centinel* put under the heading "ANTIFEDERAL."

2. See Article VII of the Massachusetts constitution of 1780 (BoR, I, 80).

Preston, Connecticut: Instructions to Its Town Delegates to the State Convention, 26 November 1787 (excerpts)[1]

At a Meeting of the Inhabitants of the Town of Preston Legally warn'd and held in Said Preston South society by adjournment November 26th AD 1787

Deacon Andrew Huntington was Moderator of Said Meeting

Voted To give the Deligates chosen by this Town to Attend the State Convention to be holden at Hartford on the first Thursday of January next the following Instructions (viz)

Col. Jeremiah Halsey & Mr. Wheeler Coit

Gentlemen

We the Inhabitants of the Town of Preston Legally conveand in Town Meeting, having made cho[i]ce of you, Deligates to Represent us in the Convention of this State to meet at Hartford in January next to consider of the Constitution proposed to be Established in the United States by the late Federal Convention held in Philadelphia, and as we consider ourselves Deeply Interested and also our Posterity In the matter of the propos'd Constitution to which for us you are to Assent or Desent we Esteem It our Right and our Duty to Instruct you in our Opinion & Desire on this Important Subject. It is our ardent wish that an Efficient Government May be Established over these States so constructed that the People may retain all Liberties Previledges & Immunities USUAL & Necessary for Citisans of a free Country and yet sufficient Provision made for carrying into Execution all the Powers Vested in Government, we are willing to give up Such Share of our Rights as to Enable Government to Support Defend and Preserve the Rest, it is Difficult to Draw the Line all will agree, that the People Should retain so much Power that If ever Venallity and Corruption Should Prevail in our publick Counsels and Government Should be Perverted and not answer the End of Its Institution viz. the well being of Society and the good of the whole In that case the People may Resume their Rights and put an end to the wantonness of Power. In whatever Government the People Neglect to Retain so much Power in their Hands as to be a check to their Rulers Depravity and the Love of Power is so prevalent in the Humane mind even of the best of men that Tyranny and Cruelty will Inevitably take place, and the People will be undeceived too late.

we agree that the People of these States have no Energetick Common compact or National existance Strictly Speaking and in that respect they are as a Number of Individuals nearly in a State of Natural Liberty and we Believe it would be for the Benefit of the People that a System of Government Should take Place that we may Enjoy National advantages & Assume Some National Importance but Individuals Should moove with Caution in giving up their Individual & Natural Rights to Society Tis much easier to give more Power into the Hands of Government when more is necessary than to recover back where to[o] much is already given the want of Attention to these maxims has Inslaved almost all the Nations of the World.—When we View the Compact or Constitution propos'd to these States we have the following Objections to its Acceptance without Alteration (viz)[2] . . .

5th we observe that the Right of Trial by Jury in Civil Causes is not Secured in the Federal Courts this is repugnant to the custum handed Down from our Ancestors and Always Set easy on the People & Esteem'd as a Previledge—

These Gentlemen are our Sentiments & These are our Objections If you find when You Join the Convention at Hartford on the Matters which Turn up in view that there is a Prospect of a Ratification of the Constitution Proposes with some of the Most material Alterations here mentioned we Willingly would give our Assent on them Conditions If there be no Prospect of any Alterations but it must Be Accepted or Rejected as it now Stands we trust from your Candour you will Peruse these our Sentiments with Deliberation and we Doubt not you will give your Assent or Dissent as you Shall really think will Terminate for the Best good of the People of these States. . . .

Ent[e]red by Daniel Morgan Jr: Town Clerk

1. MS, Town Meeting Records, Preston Town Hall, Norwich, Conn. Jeremiah Halsey and Wheeler Coit were elected on 12 November as members of the state Convention, where on 9 January 1788 they voted to ratify the Constitution. See RCS:Conn., 438–41 for the complete proceedings of both town meetings.

2. The first four objections to the Constitution opposed the infrequency of congressional elections and consequent long terms of office, the small size of the U.S. House of Representatives, Congress' power to levy indirect taxes, the appointment procedure for federal judges and their tenure for good behavior, and the method of amending the Constitution without a direct participation by the people (RCS:Conn., 438–41).

A Federal Republican: A Review of the Constitution New York, 28 November 1787 (excerpt)

On 28 November advertisements in the Philadelphia *Freeman's Journal* and the *Pennsylvania Herald* announced the sale of a pamphlet by "A Federal Republican" entitled A *Review of the Constitution Proposed by the Late Convention Held at Philadelphia, 1787* (Evans 20678). The pamphlet was printed by Robert Smith

and James Prange of Philadelphia. It was also advertised by the *Pennsylvania Packet* on 30 November and the *Pennsylvania Gazette* on 5 December. Each of the four newspapers ran its advertisement for at least two more issues, with the *Gazette* and the *Herald* running them as late as 2 January and 14 February 1788, respectively. The advertisements indicate that the pamphlet was available in at least eight Philadelphia print shops. On 28 October 1788 the printers of the Trenton *Federal Post* announced that copies of the pamphlet were still available.

The thirty-nine page pamphlet is inscribed "To the Freemen of the United States" and is dated "Philadelphia. Oct. 28, 1787." The title page includes an epigraph from Cicero's *De Offices* (Book 1, chapter XVII): "*Sed omnes omnium charitates Patna una conplexa est*" (i.e., "But one native land embraces all our loves"). The epigraph is followed by this stanza:

> "Yet not the ties that kindred bosoms bind.
> Not all in friendship's holy wreathes entwin'd
> Are half so dear, so potent to controul
> The gen'rous workings of the Patriot's soul."

Both the epigraph and the stanza appear in the Philadelphia advertisements. The last page of the pamphlet consists of an errata.

No responses to "A Federal Republican" have been located. For the entire pamphlet, see CC:303.

FRIENDS and FELLOW-COUNTRYMEN

. . . One of the learned members of the late convention—the honorable Mr. Wilson observes in his speech, that all powers which are not by the constitution given up to Congress, are reserved for the disposition of the several states.[1] This observation is wise and true, because properly speaking it should be so. In entering into the social compact, all rights which are not expressly given up to the governors are reserved to the people. That it is so from a just construction it is easy to discover.

But notwithstanding, if the people are jealous of their rights, where will be the harm in declaring them? If they be meant as they certainly are to be reserved to the people, what injury can arise from a positive declaration of it? Although in reasoning it would appear to be unnecessary, yet if the people prefer having their rights stately defined, it is certainly reasonable, that it should be done. I am well acquainted with the logical reason, that is general[ly] given for it.

It is said that the insertion of a bill of rights, would be an argument against the present liberty of the people.

To have the rights of the people declared to them, would imply, that they had previously given them up, or were not in possession of them.

This indeed is a distinction of which the votaries of scholastic philosophy might be proud—but in the political world, where reason is not cultivated independently of action and experience, such futile distinctions ought not to be agitated.

In fact, it does not exist, for I should think, it is as rational to declare the right of the people to what they already possess, as to decree to them any new rights. If the people do really possess them, there can be no harm in expressing what is meant to be understood.

A bill of rights should either be inserted, or a declaration made, that whatever is not decreed to Congress, is reserved to the several states for their own disposal.

In this particular, the articles of the present confederation have an evident advantage. The second article says, that "each state retains its *sovereignty, freedom and independence*, and every *power, jurisdiction, and right, which is not* by this confederation *expressly declared* to United States in Congress assembled."

This will appear the more proper, if we consider that these *are rights* in which all the states are concerned. It is thought proper to delegate to Congress supreme power on all occasions where the *natural* interests of the states are concerned, and why not for the same reason grant and declare to the states a bill of *those rights* which are also *mutual*?

At any rate it is certain that no injury can arise from it, and to do it, would be satisfactory and wise.

On the whole, my fellow-citizens, this constitution was *conceived* in wisdom; the thanks of the United States are justly due to the members of the late convention.

But let their productions pass again through the furnace.

Do not give them even the opportunity of depriving you of your rights and privileges, and that without breaking over any restraint imposed by the constitution.

Because this once granted they will be fully enabled in the present age to lay the gentle foundation of despotic power, and after a temporary interval of seeming humanity between you and succeeding generations, to rivet upon *them* the chains of slavery beyond the possibility of a rupture.

To guard against this, I could wish to see the proposed constitution revised and corrected. . . .

1. For James Wilson's speech of 6 October 1787, see BoR, II, 25–28.

An Old Whig VII
Philadelphia Independent Gazetteer, 28 November 1787[1]

Mr. PRINTER, Many people seem to be convinced that the proposed constitution is liable to a number of important objections; that there are defects in it which ought to be supplied, and errors which ought to be amended; but they apprehend that we must either receive this

constitution in its present form, or be left without any continental government whatsoever. To be sure, if this were the case, it would be most prudent for us, like a man who is wedded to a bad wife, to submit to our misfortune with patience, and make the best of a bad bargain. But if we will summon up resolution sufficient to examine into our true circumstances, we shall find that we are not in so deplorable a situation as people have been taught to believe, from the suggestions of interested men, who wish to force down the proposed plan of government without delay, for the purpose of providing offices for themselves and their friends. We shall find, that, with a little wisdom and patience, we have it yet in our power, not only to establish a federal constitution, but to establish a good one.

It is true that the continental convention has directed their proposed constitution to be laid before a convention of delegates to be chosen in each state, "for their assent and ratification," which seems to preclude the idea of any power in the several conventions, of proposing any alterations, or indeed of even rejecting the plan proposed, if they should disapprove of it. Still, however, the question recurs, what authority the late convention had to bind the people of the United States, to any particular form of government, or to forbid them to adopt such form of government as they should think fit. I know it is a language frequent in the mouths of some heaven-born PHAETONS amongst us, who like the son of Apollo, think themselves entitled to guide the chariot of the sun; that common people have no right to judge of the affairs of government; that they are not fit for it; that they should leave these matters to their superiors. This however, is not the language of men of real understanding, even among the advocates for the proposed constitution; but these still recognize the authority of the people, and will admit, at least in words, that the people have a right to be consulted. Then I ask, if the people in the different states have a right to be consulted, in the new form of continental government, what authority could the late convention have to preclude them from proposing amendments to the plan they should offer? Had the convention any right to bind the people to the form of government they should propose? Let us consider this matter.

The late convention were chosen by the general assembly of each state;[2] they had the sanction of Congress;[3]—for what? To consider what alterations were necessary to be made in the articles of confederation. What have they done? They have made a new constitution for the United States. I will not say, that in doing so, they have exceeded their authority; but on the other hand, I trust that no man of understanding amongst them will pretend to say, that any thing they did or could do,

was of the least avail to lessen the rights of the people to judge for themselves in the last resort. This right, is perhaps, unalienable, but at all events, there is no pretence for saying that this right was ever meant to be surrendered up into the hands of the late continental convention.

The people have an undoubted right to judge of every part of the government which is offered to them: No power on earth has a right to preclude them; and they may exercise this choice either by themselves or their delegates legally chosen to represent them in the State-Convention.—I venture to say that no man, reasoning upon *revolution* principles, can possibly controvert this right.

Indeed very few go so far as to controvert the right of the people to propose amendments; but we are told that the thing is impracticable; that if we begin to propose amendments there will be no end to them; that the several states will never agree in their amendments; that we shall never unite in any plan; that if we reject this we shall either have a worse or none at all; that we ought therefore to adopt this *at once*, without alteration or amendment.—Now these are very kind gentlemen, who insist upon doing so much good for us, whether we will or not. Idiots and maniacs ought certainly to be restrained from doing themselves mischief, and should be compelled to that which is for their own good. Whether the people of America are to be considered in this light, and treated accordingly, is a question which deserves, perhaps, more consideration than it has yet received. A contest between the patients and their doctors, which are mad or which are fools, might possibly be a very unhappy one. I hope at least that we shall be able to settle this important business without so preposterous a dispute. What then would you have us do, it may be asked? Would you have us adopt the proposed Constitution or reject it? I answer that I would neither wish the one nor the other. Though I would be far from pretending to dictate to the representatives of the people what steps ought to be pursued, yet a method seems to present itself so simple, so perfectly calculated to obviate all difficulties, to reconcile us with one another, and establish unanimity and harmony among the people of this country, that I cannot forbear to suggest it. I hope that most of my readers have already anticipated me in what I am about to propose. Whether they have or not, I shall venture to state it, in the humble expectations that it may have some tendency to reconcile honest men of all parties with one another.

The method I would propose is this—

1st. Let the Conventions of each state, as they meet, after considering the proposed Constitution, state their objections and propose their amendments.

So far from these objections and amendments clashing with each other in irreconcileable discord, as it has been too often suggested they would do, it appears that from what has been hitherto published in the different states in opposition to the proposed Constitution, we have a right to expect that they will harmonize in a very great degree. The reason I say so, is, that about the same time, in very different parts of the continent, the very same objections have been made, and the very same alterations proposed by different writers, who I verily believe, know nothing at all of each other, and were very far from acting a premeditated concert, and that others who have not appeared as writers in the newspapers, in the different states, have appeared to act and speak in perfect unison with those objections and amendments, particularly in the article of a Bill of Rights. That in short, the very same sentiments seem to have been echoed from the different parts of the continent by the opposers of the proposed Constitution, and these sentiments have been very little contradicted by its friends, otherwise than by suggesting their fears, that by opposing the Constitution at present proposed, we might be disappointed of any federal government or receive a worse one than the present.—It would be a most delightful surprize to find ourselves all of one opinion at last; and I cannot forbear hoping that when we come fairly to compare our sentiments, we shall find ourselves much more nearly agreed than in the hurry and surprize in which we have been involved on this subject, than we ever suffered ourselves to imagine.

2d. When the Conventions have stated these objections and amendments, let them transmit them to Congress and adjourn, praying that Congress will direct another Convention to be called from the different states, to consider of these objections and amendments, and pledging themselves to abide by whatever decision shall be made by such future Convention on the subject; whether it be to amend the proposed Constitution or to reject any alteration and ratify it as it stands.

3d. If a new Convention of the United States should meet, and revise the proposed Constitution, let us agree to abide by their decision.—It is past a doubt that every good citizen of America pants for an efficient federal government—I have no doubt we shall concur at last in some plan of continental government, even if many people could imagine exceptions to it; but if the exceptions which are made at present, shall be maturely considered and even be pronounced by our future representatives as of no importance; (which I trust they will not) even in that case, I have no doubt that almost every man, will give up his own private opinion and concur in that decision.

4th. If by any means another Continental Convention should fail to meet, then let the Conventions of the several states again assemble and at last decide the great solemn question whether we shall adopt the Constitution now proposed, or reject it? And, whenever it becomes necessary to decide upon this point, one at least who from the beginning has been invariably anxious for the liberty and independence of his country, will concur in adopting and supporting this Constitution, rather than none;—though I confess I could easily imagine, some other form of confederation, which I should think better entitled to my hearty approbation;—and indeed I am not afraid of a worse.

1. This essay, with many changes in punctuation and capitalization, was also printed in the Philadelphia *Freeman's Journal* on 28 November. It was reprinted in the *New York Journal*, 15 December, and Massachusetts *Salem Mercury*, 18 December. For the authorship of "An Old Whig," see BoR, II, 35.

2. For the election of delegates to the Constitutional Convention, see CDR, 191–230.

3. For Congress' resolution of 21 February 1787 calling the Constitutional Convention, see CC:1.

One of the Middling-Interest
Massachusetts Centinel, 28 November 1787[1]

Some Objections to the New Constitution considered.[2]

The first objection that is generally made to the proposed form of government is the want of a "BILL OF RIGHTS." To answer this objection we shall do well to consider where we learned the idea of a bill of rights, what it is, and what purpose it would serve in the new government, and whether there is in fact a bill of rights connected with that government or not.

We acquire the idea of a bill of rights from the English history, and the instrument emphatically called by that name, was executed at the revolution [1688–1689], and was absolutely necessary to ascertain and guard the privileges of a people who had no *written* constitution, as we have. I say they had no *written* constitution, unless we call by that name the Magna Charta, the petition of rights, or their several acts of parliament. A very great part of even the *laws* of England, namely, that called the common law, is wholly *unwritten*, and what has been handed down as custom and common usage through many centuries: And we are even at this day to look for the English *constitution* among the opinions of contradictory authors; and it is altogether a matter of argument, though indeed it happens that in the course of so many years, almost all possible questions of constitutionality have arisen in their courts of law, and have been decided—So that by looking into a vast variety of voluminous authors we *can come at* the English constitution.—I premise

all this to shew the propriety of *that* people insisting on an *expressed* bill of rights, and on several other great instruments which at different opportunities they acquired—Because their constitution being only to be collected out of the dust of ages, and from the meer opinions of the learned, it was just they should procure their kings to sign and seal, if I may so express it, a plain and express confirmation of those parts of their constitution which former monarchs had denied or violated. This is a short history of the origin of a bill of rights.

We are now to see what use such an instrument would be in the lately proposed form of federal government.

If we had not a state constitution already declared on paper—and if we were now in the same circumstances we were when we seceded from Britain, and before we had ascertained and declared all our rights, it might be more necessary for us to do it *now* when we are to form a new federal constitution. But agreeably to the theory of the original contract, and which authors once thought visionary, we assembled in a state convention eight years since, and then plainly distinguished, agreed to, and published a bill of rights and form of government for this Commonwealth.—I now undertake to say that we part with few or none of these rights by accepting the new federal constitution—that *where* we part with *any*, it is in exchange for others that are national, and fully expressed; and that some of those rights ascertained in the state constitution are even repeated in that which is offered by the federal convention. The very reason why some of those are thus *repeated* is because those rights were considered essential by the federal convention, and are not found in the particular constitutions of all the States, as they are in that of Massachusetts. And the reason why *some* rights which are expressed in the Massachusetts constitution, *are not* repeated in the federal plan is because such rights are plainly expressed in *all* the other state constitutions. Thus for example, the tenth section of the first federal article (which by the way, as well as the ninth section, is a bill of rights) declares that no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. Now this declaration (except that of the *ex post facto* law, which we shall hereafter consider) is altogether superfluous as it relates to Massachusetts, because our own constitution includes the same restrictions: But it is quite necessary for those States whose forms of government contain no such regulations.

According to this idea then, we have our rights more clearly expressed than formerly; for we *retain* all those rights which are prefixed to our state constitution, and which are not expressly given up to the national government; in addition to which we have those other rights

which are *not* in the state constitution, but which are expressed in the *federal*.—The 24th article of our own state bill of rights declares, for example, that laws made to punish for actions done before the existence of such laws, &c. are unjust.[3] This relates then to *ex post facto* laws in criminal prosecutions: But our state bill of rights is silent as to any *ex post facto* laws which relate to property, and civil prosecutions; though it must be confessed that such laws are as much against the nature of government as those relating to crimes. The federal constitution has accordingly guarded against such laws, and clearly, because some states, of which our own is one, have not observed such a restriction. Here then is one example at least of our own bill of rights being amended by the federal; or rather of a distinct right expressed in the federal, but not in the state constitution.

The first section in the federal form will help our eye-sight, if we are not determined to be blind, to see that we retain all our rights, which we have not expressly relinquished to the union—That section declares, that all legislative powers herein *given* (*i.e.* given in the new constitution) shall be vested in Congress, &c.—The legislative powers which are *not* given therein, are surely not in Congress; and if not in Congress are retained by the several states, and secured by their several constitutions.

The opposers of the new government have branched out the evils arising from the pretended want of a declaration of rights into several particulars—one of which is, that the LIBERTY OF THE PRESS is not provided for:—But the real question is, where is it taken away? For if the several state constitutions already protect the liberty of the press, and no legislative power is given to Congress to restrict that liberty; but if on the other hand the republican forms of government are guaranteed to the several states, then surely the liberty of the press is most amply provided for. The first section in the federal constitution already quoted, plainly shews, that Congress have no legislative powers but what are given them by that constitution—they therefore can never restrict the liberty of the press, unless they have some power given them by the constitution so to do, which no where appears.

The *trial by jury*, in civil cases, is also said not to be protected by the new government. It is true, the convention have not said that trial by jury in civil cases is indispensible as they have in criminal cases; if they had so said it would have been a very great absurdity; for there is no one point in which the states more differ than in this, though there is one circumstance in which they all agree, viz. in deciding some cases of property without any jury at all. In Massachusetts the penalty of bonds is reduced by the judges to the principal and interest, mentioned

in the conditions of those bonds, without the equitable interference of a jury;—and judgments are rendered in default cases at the clerk's offices without either judge or jury in thousands of instances—though in some States after default [is] made, a jury are by law obliged to ascertain the damages. If people would reflect, that out of three or four hundred actions at a court not more than ten are decided by jury, they would not be anxious to have it expressed in a bill of rights, that *all* civil causes should be tried by jury: And if it were to be expressed *what* civil causes should be tried by jury, it might take a volume of laws instead of an article of rights. The legislature, no doubt, will make some general regulations in this matter, which will suit the greater number of states—and if those regulations should not suit the ancient usage of any *particular state*, still the advantages would not be important, when we remember that the federal court are to decide upon no causes whatever which are now triable in any one state, unless it be causes which may arise between the citizens of different states, which are so rare, as that they make up but a very small part of the publick business—and even causes of this kind, if found inconvenient to the citizens, may be excepted, in whole or in part, from continental jurisdiction, as appears by the latter part of the 2d section of the 3d article in the federal government.

But some will ask, why is even this left to the inclinations of Congress, who *may* authorize the judicial to bring a citizen from one end of the continent to the other, to answer to an action between citizens of different states? The answer is, that all legislatures must be trusted with something—to suppose they will so form the judicial departments merely to oppress, without a possibility of serving avarice, ambition or any known human motive, is to suppose that men will be so disinterested as to act against their own existence, and from no given cause that can be described. Our own state constitution declares that the legislature shall erect judicatories for the trial of all causes in the Commonwealth, but does not declare how many, nor what sort, nor when they shall sit: Because this would be making the law, which is the business of the General Court, and not the business of the makers of the constitution.

There are other exceptions which I shall consider in a future paper, not having room to do it in this. I cannot, however, conclude these remarks, without observing upon the unjustifiable arts which have been practised to sour the minds of the people against the new government. There are men whose abilities are commensurate to the narrow circle of state politicks, and whose little splendours would be lost in the bright blaze of continental glory. There are others whose fortunes are des-

perate and whose last hopes are to participate [in] the booty in a publick shipwreck. Some of these, not contented with stating fairly their observations in the Gazettes—have published hand-bills fraught with lies, and by night have scattered them on the floors of the Senate house, to intimidate the minds of some, and to inflame the breasts of others.[4]

The adoption of a new government for many millions of people is certainly of too serious a nature to be forwarded or discouraged by violence or cunning. Every man who has property to protect, or children to make happy, or who, having neither property nor children, has only his own personal liberty to maintain or enlarge, will consider the present æra as a golden opportunity offered him by providence; an opportunity that never came before, and that may never arrive again!

1. Reprinted: Newburyport, Mass., *Essex Journal*, 12, 19 December; Portland, Maine, *Cumberland Gazette*, 13 December. For a response to this essay, see "One of the Common People," *Boston Gazette*, 3 December (BoR, II, 182–84).

2. Among other objections, "One of the Middling-Interest" is responding to George Mason's objections which were printed for the first time in the *Massachusetts Centinel* on 21 November.

3. See BoR, I, 80.

4. A reference to a one-page broadside published in Boston titled "Truth: Disadvantages of Federalism, Upon the New Plan," 14 November (RCS:Mass., 232–33). This broadside listed thirteen objections to the Constitution including the dangers to the freedom of the press, trial by jury, habeas corpus, freedom of religion, and the Massachusetts Declaration of Rights.

Valerius

Massachusetts Centinel, 28 November 1787

Mr. RUSSELL, It is objected to the new Constitution, that it is deficient in a Bill of Rights—This objection might have had the greatest weight in a government merely national, as in this case, there would have been no intermediate checks between the governing power and the people, over whom the Constitution was intended to operate.—But the form of government now proposed is by no means of this sort—It is a federal government in every point of view, and is predicated in every part of it, upon the idea of subordinate constitutions being in actual operation. When we inquire therefore, where we are to look for that personal security inseparable from the very idea of freedom, we are only to cast our eye on the respective constitutions, and on the principles upon which they are established, and the difficulty will be immediately resolved: Had there have been no governments in existence, limited in their powers to their several districts, there then would have been an indispensible necessity of some provisional articles, defining and ex-

plaining those personal and natural rights, which every individual feels himself as completely possessed of at present; and which in my opinion are as firmly secured to him, as if they were formally prefixed to the new, in the same manner that they are so fully and explicitly stated in our several state constitutions.

When the Convention was in session, they were to form a constitution suited, as near as possible, not only to the habits and dispositions of the people at large, but to the governments in operation: The difficulty was not, in what way the rights and privileges of the people could be secured to them—it would have been absurd to have spent even a day in the contemplation of this object—for these rights and privileges were fully and effectually secured already—They saw, in the constitutions of every state, the strongest provisions for the rights of the subjects that ever were yet committed to paper, or parchment, in any country, or in any situation.—Indeed no spot on earth is found, but in America, in which such or any precautions were expressed to guarantee to each individual the rights of person and conscience, which in this country are secured, and will be forever unalienable, whether delineated in a preamble to the federal Constitution or not.

The expulsion of the Tarquins preceded the laws of the Twelve Tables, and would equally have taken place if even no laws had been previously framed to confine the power of the sovereign within the line of justice.[1] The finger of Heaven has fixed a boundary in the heart of man, beyond which even tyranny dare not pass. The condition of society is by no means deplorable in France, England, or even Spain or Portugal, and yet the forms of government in these countries are only founded in chance, and not in compact: Shall we fear then that we shall not be free, when we have not only in our favour what may be found in every other country, but have the additional securities, of privileges asserted and explained, in every law and constitution in the Union.

If the convention then had only to select for the federal head, such powers as were necessary for the protection and safety of the whole, as was really the case, how strange would it have been for them to have formed a provision, in a Bill of Rights, to secure what was already so fully established. The liberties of the Romans, Greeks and English, have been continued through a series of years, even without the use of the Press—which I conceive to be the greatest security of all others. Now will any man come forward and say, that the Congress under the new Constitution will have a single power to limit the operation of this essential privilege; and if they have in what passage is such a power expressed? We have declared in this State, that the liberty of the press is

an indispensible right of the people[2]—Can the Congress alienate this right? The moment they attempt it the new Constitution would be annihilated and the question would be put on the issue of force.—Our State Constitution has declared that each member of society is possessed of certain natural rights, privileges and immunities.[3]—Does the Federal Constitution say otherwise?—No—It is set up merely to confirm them.

The rights of a people may be lost either by external violence, or internal commotions.—To prevent these taking place as far as possible, was the design of the new government.—As we have been circumstanced since the war, and indeed in the war, we have been in danger of both; and I am clearly of opinion from one cause—the want of power in the Federal head competent to the necessities of the union.—To secure this power to the people of these States, and to unite a great continent under one government, of sufficient force to secure us from dissention within, and from insult abroad, is the object of the new government. That it will be competent to these invaluable purposes as well as to the maintenance, security, and extension of our commercial rights, I think may be demonstrated.

1. About 509 B.C. Tarquin the Proud, the last of the kings of Rome, was expelled in a revolt led by Lucius Junius Brutus, who helped to found the Roman Republic. The Twelve Tables were drawn up in 451 and 450 B.C. in answer to the complaints of plebeians against the arbitrary actions of patrician magistrates. The plebeians insisted that laws be reduced to writing. The Twelve Tables consisted mainly of a codification of unwritten laws and usages.

2. See Article XVI of the Massachusetts Declaration of Rights (BoR, I, 79).

3. See Article I of the Massachusetts Declaration of Rights (BoR, I, 76).

The Pennsylvania Convention and a Bill of Rights 28 November–12 December 1787

The Pennsylvania Convention met in Philadelphia on 20 November 1787 and proceeded to business the next day when enough members were present for a quorum. The delegates debated the Constitution extensively before ratifying it on 12 December by a vote of forty-six to twenty-three. Only the debates concerning a bill of rights are printed here. For the full proceedings and debates, see RCS:Pa., 321–616 and RCS:Pa. Supplement, 607–721.

James Wilson: Speech in the Pennsylvania Convention 28 November 1787[1]

This will be a proper time for making an observation or two, on what may be called the preamble to this constitution. I had occasion, on a

former day,[2] to mention that the leading principle in politics, and that which pervades the American constitutions, is, that the supreme power resides in the people; this constitution, Mr. President, opens with a solemn and practical recognition of that principle; "WE, THE PEOPLE OF THE UNITED STATES, in order to form a more perfect union, establish justice, &c. DO ORDAIN AND ESTABLISH this constitution, for the United States of America." It is announced in their name, it receives its political existence from their authority—they ordain and establish: What is the necessary consequence?—those who ordain and establish, have the power, if they think proper, to repeal and annul.—A proper attention to this principle may, perhaps, give ease to the minds of some, who have heard much concerning the necessity of a bill of rights.

Its establishment, I apprehend, has more force, than a volume written on the subject—it renders this truth evident, that the people have a right to do what they please, with regard to the government. I confess, I feel a kind of pride, in considering the striking difference between the foundation, on which the liberties of this country are declared to stand in this constitution, and the footing on which the liberties of England are said to be placed. The magna charta of England is an instrument of high value to the people of that country. But, Mr. President, from what source does that instrument derive the liberties of the inhabitants of that kingdom?—Let it speak for itself.—The king says, "*we* have *given* and *granted* to all archbishops, bishops, abbots, priors, earls, barons, and to all the freemen of this our realm, these liberties following, to be kept in our kingdom of England for ever." When this was assumed as the leading principle of that government, it was no wonder that the people were anxious to obtain bills of rights, and to take every opportunity of enlarging and securing their liberties. But, here, Sir, the fee-simple remains in the people at large, and, by this constitution, they do not part with it.

1. Printed: *Debates of the Convention, of the State of Pennsylvania, on the Constitution, Proposed for the Government of the United States* . . . (Philadelphia, 1788) (Evans 21365), 40–41. This volume was printed from the shorthand notes taken by Thomas Lloyd. For the publication of this volume, see CC:511 and RCS:Pa., 40–42. (Hereafter cited as Lloyd, *Debates.*)

2. At the end of a long speech on 24 November, Wilson said "In THIS CONSTITUTION, *all authority is derived from the* PEOPLE" (RCS:Pa., 363).

John Smilie: Speech in the Pennsylvania Convention 28 November 1787[1]

I expected, Mr. President, that the honorable gentleman [i.e., James Wilson] would have proceeded to a full and explicit investigation of the proposed system, and that he would have made some attempts to

prove that it was calculated to promote the happiness, power, and general interests of the United States. I am sorry that I have been mistaken in this expectation, for surely the gentleman's talents and opportunities would have enabled him to furnish considerable information upon this important subject; but I shall proceed to make a few remarks upon those words in the preamble of this plan, which he has considered of so super-excellent a quality. Compare them, Sir, with the language used in forming the state constitution and however superior they may be to the terms of the great charter of England [i.e., Magna Charta], still, in common candor, they must yield to the more sterling expressions employed in this act. Let these speak for themselves:

"That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

That the people of this state have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

That all power being originally inherent in, and consequently derived from the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community: And that the community hath an indubitable, unalienable and indefeasible right to reform, alter or abolish government in such manner as shall be by that community judged most conducive to the public weal."[2]

But the gentleman takes pride in the superiority of this short preamble when compared with magna charta;—why, Sir, I hope the rights of men are better understood at this day, than at the framing of that deed, and we must be convinced that civil liberty is capable of still greater improvement and extension, than is known even in its present cultivated state. True, Sir, the supreme authority naturally rests in the people, but does it follow, that therefore a declaration of rights would be superfluous? Because the people have a right to alter and abolish government, can it therefore be inferred that every step taken to secure that right would be superfluous and nugatory? The truth is, that unless some criterion is established by which it could be easily and constitutionally ascertained how far our governors may proceed, and by which it might appear when they transgress their jurisdiction, this idea of altering and abolishing government is a mere sound without substance.

Let us recur to the memorable declaration of the 4th of July, 1776,[3] Here it is said.

"When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

Now, Sir, if in the proposed plan, the gentleman can shew any similar security for the civil rights of the people I shall certainly be relieved from a weight of objection to its adoption, and I sincerely hope, that as he has gone so far, he will proceed to communicate some of the reasons (and undoubtedly they must have been powerful ones,) which induced the late federal convention to omit a bill of rights, so essential in the opinion of many citizens to a perfect form of government.

1. Printed: *Pennsylvania Herald*, 8 December 1787.
2. Articles I, III–V of the Pennsylvania Declaration of Rights (BoR, I, 94–95).
3. The date incorrectly appears as "1786," instead of "1776."

Thomas McKean: Speech in the Pennsylvania Convention 28 November 1787[1]

I conceived, Mr. President, that we were at this time to confine our reasoning to the first article, which relates to the legislative power composed of two branches, and the partial negative of the President. Gentlemen, however, have taken a more extensive field, and have employed themselves in animadverting upon what has been omitted, and not upon what is contained in the proposed system. It is asked, Sir, why a bill of rights, was not annexed to the constitution? The origin of bills of rights has been referred to, and we find that in England they proceed upon the principle that the supreme power is lodged in the King and not in the people, so that their liberties are not claimed as an

inherent right, but as a grant from the sovereign. The great charter [i.e., Magna Charta], rests on that footing, and has been renewed and broken above 30 times. Then we find the petition of rights in the reign of Charles the first, and, lastly, the declaration of rights on the accession of the Prince of Orange to the British throne. The truth is, Sir, that bills of rights are instruments of modern invention, unknown among the antients, and unpracticed but by the British nation and the governments descended from them. For though it is said that Poland has a bill of rights, it must be remembered that the people have no participation in that government. Of the constitutions of the United States, there are but five out of the thirteen which have bills of rights.[2] In short, though it can do no harm, I believe, yet it is an unnecessary instrument, for, in fact the whole plan of government is nothing more than a bill of rights,—a declaration of the people in what manner they chuse to be governed. If Sir, the people should at any time, desire to alter and abolish their government, I agree with my honorable colleague [i.e., James Wilson], that it is in their power to do so, and I am happy to observe that the constitution before us, provides a regular mode for that event. At present my chief object is to call upon those who deem a bill of rights so essential, to inform us if there are any other precedents than those I have alluded to, and if there is not, the sense of mankind and of nations will operate against the alledged necessity.

1. Printed: *Pennsylvania Herald*, 8 December 1787.

2. See footnote 2 to "One of the People," *Maryland Journal*, 25 December (BoR, II, 210).

James Wilson and John Smilie
Speeches in the Pennsylvania Convention, 28 November 1787[1]

MR. WILSON. ⟨Mr. President, we are repeatedly called upon to give some reason why a bill of rights has not been annexed to the proposed plan. I not only think that enquiry is at this time unnecessary and out of order, but I expect, at least, that those who desire us to shew why it was omitted, will furnish some arguments to shew that it ought to have been inserted; for the proof of the affirmative naturally falls upon them. But the truth is, Sir, that this circumstance, which has since occasioned so much clamour and debate, never struck the mind of any member in the late convention 'till, I believe, within three days of the dissolution of that body, and even then, of so little account was the idea, that it passed off in a short conversation, without introducing a formal debate, or assuming the shape of a motion.[2] For, Sir, the attempt

to have thrown into the national scale an instrument in order to evince that any power not mentioned in the constitution was reserved, would have been spurned at as an insult to the common understanding of mankind. In civil government it is certain, that bills of rights are unnecessary and useless, nor can I conceive whence the contrary notion has arisen. Virginia has no bill of rights, and will it be said that her constitution was the less free?⟩

MR. SMILIE. I beg leave to observe, Mr. President, that although it has not been inserted in the printed volume of state constitutions,[3] yet I have been assured by Mr. Mason, that Virginia has a bill of rights.

MR. WILSON. I do not rely upon the information of Mr. Mason, or of any other gentleman on a question of this kind, but I refer to the authenticity of the volume which contains the state constitutions, and in that Virginia has no bill of rights. But, Sir, ⟨has South Carolina no security for her liberties? that state has no bill of rights. Are the citizens of the Eastern shore of the Delaware more secured in their freedom, or more enlightened on the subject of government than the citizens of the western shore? New-Jersey has no bill of rights; New-York has none; Connecticut has none, and Rhode-Island has none.[4] Thus, Sir, it appears from the example of other states, as well as from principle, that a bill of rights is neither an essential nor a necessary instrument in framing a system of government, since liberty may exist and be as well secured without it. But it was not only unnecessary, but on this occasion, it was found impracticable; for who will be bold enough to undertake to enumerate all the rights of the people? and when the attempt to enumerate them is made, it must be remembered that if the enumeration is not complete, every thing not expressly mentioned will be presumed to be purposely omitted. So it must be with a bill of rights, and an omission in stating the powers granted to the government, is not so dangerous as an omission in recapitulating the rights reserved by the people. We have already seen the origin of magna charta, and tracing the subject still further, we find the petition of rights claiming the liberties of the people, according to the laws and statutes of the realm, of which the great charter was the most material; so that here again recourse is had to the old source from which their liberties are derived, the grant of the king. It was not 'till the revolution that the subject was placed upon a different footing, and even then the people did not claim their liberties as an inherent right, but as the result of an original contract between them and the sovereign. Thus, Mr. President, an attention to the situation of England, will shew that the conduct of that country in respect to bills of rights, cannot furnish an example to the inhabitants of the United States, who by the revolution

have regained all their natural rights, and possess their liberty neither by grant nor contract. In short, Sir, I have said that a bill of rights would have been improperly annexed to the federal plan, and for this plain reason, that it would imply that whatever is not expressed was given, which is not the principle of the proposed constitution.〉

MR. SMILIE. The arguments which have been urged, Mr. President, have not in my opinion, satisfactorily shewn that a bill of rights would have been an improper, nay, that it is not a necessary appendage to the proposed system. As it has been denied that Virginia possesses a bill of rights, I shall on that subject only observe, that Mr. Mason, a gentleman certainly of great information and integrity, has assured me that such a thing does exist, and I am persuaded, I shall be able at a future period to lay it before the convention. But, Sir, the state of Delaware has a bill of rights, and I believe one of the honourable members (Mr. M'Kean) who now contests the necessity and propriety of that instrument, took a very conspicuous part in the formation of the Delaware government. It seems however that the members of the federal convention were themselves convinced, in some degree, of the expediency and propriety of a bill of rights, for we find them expressly declaring that the writ of Habeas Corpus and the trial by jury in criminal cases shall not be suspended or infringed. How does this indeed agree with the maxim that whatever is not given is reserved? Does it not rather appear from the reservation of these two articles that every thing else, which is not specified, is included in the powers delegated to the government? This, sir, must prove the necessity of a full and explicit declaration of rights; and when we further consider the extensive, the undefined powers vested in the administrators of this system, when we consider the system itself as a great political compact between the governors and the governed, a plain, strong, and accurate, criterion by which the people might at once determine when, and in what instance, their rights were violated, is a preliminary, without which this plan ought not to be adopted. So loosely, so inaccurately are the powers which are enumerated in this constitution defined, that it will be impossible, without a test of that kind, to ascertain the limits of authority, and to declare when government has degenerated into oppression. In that event the contest will arise between the people and the rulers: "You have exceeded the powers of your office, you have oppressed us," will be the language of the suffering citizens. The answer of the government will be short—"We have not exceeded our power: you have no test by which you can prove it." Hence, Sir, it will be impracticable to stop the progress of tyranny, for there will be no check but the people, and their exertions must be futile and uncertain; since it will

be difficult indeed, to communicate to them, the violation that has been committed, and their proceedings will be neither systematical nor unanimous. It is said, however, that the difficulty of framing a bill of rights was insurmountable: but, Mr. President, I cannot agree in this opinion. Our experience, and the numerous precedents before us, would have furnished a very sufficient guide. At present there is no security, even for the rights of conscience, and under the sweeping force of the sixth article, every principle of a bill of rights, every stipulation for the most sacred and invaluable privileges of man, are left at the mercy of government.[5]

1. Printed: *Pennsylvania Herald*, 12 December 1787. The text of Wilson's speeches within angle brackets was quoted by "Alfredus," in the Exeter, N.H., *Freeman's Oracle*, 18 January 1788 (BoR, II, 267–72). For additional accounts of the speeches by Wilson and Smilie, see RCS:Pa., 390, 392.

2. Throughout the Convention various proposals were considered and accepted protecting individual rights. On 12 September, George Mason made a motion that a committee be appointed to draft a bill of rights. The proposal was rejected ten states to zero with one state absent. For the debate over a bill of rights in the Constitutional Convention, see BoR, I, 124–26.

3. In 1781 and 1786 Congress ordered the printing of a book that included all of the state constitutions (Evans 17390, 20064). The book did not contain the Virginia Declaration of Rights adopted on 12 June 1776.

4. For the state bills of rights, see BoR, I, 57–113.

5. A reference to the supremacy clause.

Robert Whitehill: Speech in the Pennsylvania Convention 28 November 1787[1]

True it is, Mr. President, that if the people intended to engage in one comprehensive system of continental government, the power to frame that system must have been conferred by them, for the legislatures of the states are sworn to preserve the independence of their respective constitutions, and, therefore, they could not consistently with their most sacred obligations, authorise an act which sacrificed the individual to the aggregate sovereignty of the states. But it appears from the origin and nature of the commission under which the late convention assembled, that a more perfect confederation was the only object submitted to their wisdom, and not, as it is attempted by this plan, the total destruction of the government of Pennsylvania, and of every other state. So far, Sir, the interference of the legislatures was proper and efficient; but the moment the convention went beyond that object, they ceased to act under any legitimate authority; for, the assemblies could give them none, and it cannot be pretended that they were called together by the people; for, till the preamble was produced, it never was

understood that the people at large had been consulted upon the occasion, or that otherwise than through their representatives in the several states, they had given a sanction to the proceedings of that body.[2] If, indeed, the Federal Convention, finding that the old system was incapable of repair, had represented the incurable defects to Congress, and advised that the original and inherent power of the people might be called into exercise for the institution of a new government, then Sir, the subject would have come fairly into view, and we should have known upon what principles we proceeded. At present we find a convention appointed by one authority, but acting under the arbitrary assumption of another,—and instead of transacting the business which was assigned to them, behold they have produced a work of supererogation, after a mysterious labour of three months.[3] Let us, however, Sir, attend for a moment to the constitution; and here we shall find in a single line, sufficient matter for weeks of debate, and which it will puzzle any one member to investigate and define. But, besides the powers enumerated, we find in this constitution an authority is given to make all laws that are necessary to carry it effectually into operation, and what laws are necessary is a consideration left for Congress to decide. In constituting the representative body, the interposition of the Congress is, likewise, made conclusive; for, with the power of regulating the place and manner of elections, it is easy to perceive that the returns will always be so managed as to answer their purpose.[4] It is strange to mark however, what a sudden and striking revolution has taken place in the political sentiments of America, for, Sir, in the opening of our struggle with Great-Britain, it was often insisted that annual parliaments were necessary to secure the liberties of the people, and yet it is here proposed to establish a House of Representatives which shall continue for two, a Senate for six, and a President for four years! What is there in this plan indeed, which can even assure us that the several departments shall continue no longer in office? Do we not know, that an English parliament elected for three years, by a vote of their own body, extended their existence to seven, and with this example, Congress possessing a competent share of power may easily be tempted to exercise it. The advantages of annual elections are not at this day to be taught, and when every other security was withheld, I should still have thought there was some safety in the government had this been left. The seats of Congress being held for so short a period, and by a tenure so precarious as popular elections, there could be no inducement to invade the liberties of the people, nor time enough to accomplish the schemes of ambition and tyranny. But when the period is protracted, an object is presented worthy of contention, and the duration of the

office affords an opportunity for perpetuating the influence by which it was originally obtained. Another power designed to be vested in the new government, is the superlative power of taxation, which may be carried to an inconceivable excess, swallowing up every object of taxation, and, consequently plundering the several states of every means to support their governments, and to administer their laws. Then, Sir, can it longer be doubted that this is a system of consolidation? That government which possesses all the powers of raising and maintaining armies, of regulating and commanding the militia, and of laying imposts and taxes of every kind, must be supreme, and will (whether in twenty or in one year, it signifies little to the event) naturally absorb every subordinate jurisdiction. It is in vain, Sir, to flatter ourselves that the forms of popular elections will be the means of self-preservation, and that the officers of the proposed government will uniformly act for the happiness of the people, for why should we run a risque which we may easily avoid? The giving such extensive and undefined power is a radical wrong, that cannot be justified by any subsequent merit in the exercise: for in framing a new system, it is our duty rather to indulge a jealousy of the human character, than an expectation of unprecedented perfection. Let us, however, suppose, what will be allowed to be at least possible, that the powers of this government should be abused, and the liberties of the people infringed: do any means of redress remain with the states, or with the people at large, to oppose and counteract the influence and oppression of the general government? Secret combinations, partial insurrections, sudden tumults may arise, but these being easily defeated and subdued, will furnish a pretence for strengthening that power which they were intended to overthrow. A bill of rights Mr. President, it has been said, would not only be unnecessary, but it would be dangerous, and for this special reason, that because it is not practicable to enumerate all the rights of the people, therefore it would be hazardous to secure such of the rights as we can enumerate! Truly, Sir, I will agree that a bill of rights may be a dangerous instrument, but it is to the views and projects of the aspiring ruler, and not to the liberties of the citizen. Grant but this explicit criterion, and our governors will not venture to encroach,—refuse it, and the people cannot venture to complain. From the formal language of magna charta we are next taught to consider a declaration of rights as superfluous; but, Sir, will the situation and conduct of Great Britain furnish a case parallel to that of America? It surely will not be contended, that we are about to receive our liberties as a grant or concession from any power on earth; so that if we learn any thing from the English charter, it is this, that the people having negligently lost, or submissively resigned

their rights into the hands of the crown, they were glad to recover them upon any terms: their anxiety to secure the grant by the strongest evidence will be an argument to prove, at least, the expediency of the measure, and the result of the whole is a lesson instructing us to do by an easy precaution, what will hereafter be an arduous and perhaps an insurmountable task. But even in Great-Britain, whatever may be the courtesy of their expressions, the matter stands substantially on a different footing, for we know that the divine right of kings is there, as well as here, deemed an idle and chimerical tale. It is true the preamble to the great charter declares the liberties enumerated in that instrument, to be the grant of the sovereign, but the hyperbolical language of the English law has likewise declared that "the king can do no wrong,"[5] and yet, from time to time, the people have discovered in themselves the natural source of power, and the monarchs have been made painfully responsible for their actions. Will it still be said, that the state governments would be adequate to the task of correcting the usurpations of Congress? Let us not, however, give the weight of proof to the boldness of assertion; for, if the opposition is to succeed by force, we find both the purse and the sword are almost exclusively transferred to the general government, and if it is to succeed by legislative remonstrance, we shall find that expedient rendered nugatory by the law of Congress, which is to be the supreme law of the land. Thus, Mr. President, must the powers and sovereignty of the several states be eventually destroyed, and when, at last, it may be found expedient to abolish that connection, which, we are told, essentially exists between the federal and individual legislatures, the proposed constitution is amply provided with the means in that clause which assumes the authority to alter or prescribe the place and manner of elections.[6] I feel, Mr. President, the magnitude of the subject in which I am engaged, and although I am exhausted with what I have already advanced, I am conscious that the investigation is infinitely far from being complete. Upon the whole therefore, I wish it to be seriously considered, whether we have a right to leave the liberties of the people to such future constructions and expositions as may possibly be made upon this system;—particularly when its advocates, even at this day, confess that it would be dangerous to omit any thing in the enumeration of a Bill of Rights, and according to their principle, the reservation of the Habeas Corpus, and trial by jury in criminal cases, may hereafter be construed to be the only privileges reserved by the people. I am not anxious, Mr. President, about forms, it is the substance which I wish to obtain; and therefore I acknowledge, if our liberties are secured by the frame of government itself, the supplementary instrument of a declaration of rights may well

be dispensed with. But, Sir, we find no security there, except in the two instances referred to, and it will not, I hope any longer be alledged that no security is requisite, since those exceptions prove a contrary sentiment to have been entertained by the very framers of the proposed constitution. The question at present, sir, is however, of a preliminary kind,—does the plan now in discussion propose a consolidation of the states? And will a consolidated government be most likely to promote the interests and happiness of America? If it is satisfactorily demonstrated, that in its principles or in its operation, the dissolution of the state sovereignties is not a necessary consequence, I shall then be willing to accompany the gentlemen on the other side in weighing more particularly its merits and demerits. But my judgment, according to the information I now possess, leads me to anticipate the annihilation of the several state governments, an event never expected by the people, and which would I fervently believe, destroy the civil liberties of America.

1. Printed: *Pennsylvania Herald*, 15 December 1787. For the full speech, RCS:Pa., 393–98.

2. All of the delegates to the Constitutional Convention were elected by state legislatures. None were elected directly by the people.

3. A reference to the rule of secrecy under which the Constitutional Convention operated.

4. A reference to Article I, section 4, which empowered Congress to regulate elections of federal Representatives and Senators.

5. Blackstone, *Commentaries*, Book I, chapter 12, pp. 244–45; Book III, chapter 17, pp. 254–55.

6. See footnote 4 above.

Thomas Hartley: Speech in the Pennsylvania Convention 30 November 1787[1]

It has been uniformly admitted, Sir, by every man who has written or spoken upon the subject, that the existing confederation of the states, is inadequate to the duties, of a general government. The lives, the liberties, and the property of the citizens, are no longer protected and secured; so that necessity compels us to seek beneath another system, some safety for our most invaluable rights and possessions. It is then, the opinion of many wise and good men, that the constitution presented by the late federal convention, will in a great measure afford the relief which is required by the wants and weakness of our present situation; but, on the other hand, it has been represented as an instrument to undermine the sovereignty of the states, and destroy the liberties of the people. It is the peculiar duty of this convention to inves-

tigate the truth of those opinions, and to adopt or reject the proposed Constitution, according to the result of that investigation. For my part, I freely acknowledge, Mr. President, that, impressed with a strong sense of the public calamities, I regard the system before us as the only prospect which promises to relieve the distresses of the people, and to advance the national honor and interests of America. I shall therefore offer such arguments in opposition to the objections raised by the honorable delegates from Cumberland and Fayette [Robert Whitehill and John Smilie], as have served to establish my judgment, and will, I hope, communicate some information to the judgments of the worthy members who shall favor me with a candid attention. The first objection is, that the proposed system is not coupled with a bill of rights, and therefore, it is said, there is no security for the liberties of the people. This objection, Sir, has been ably refuted by the honorable members from the city [James Wilson and Thomas McKean], and will admit of little more animadversion than has already been bestowed upon it, in the course of their arguments. It is agreed, however, that the situation of a British subject, and that of an American citizen in the year 1776, were essentially different; but it does not appear to be accurately understood in what manner the people of England became enslaved before the reign of King John. Previously to the Norman conquest, that nation certainly enjoyed the greatest portion of civil liberty then known in the world. But when William, accompanied by a train of courtiers and dependants, seized upon the crown, the liberties of the vanquished were totally disregarded and forgotten, while titles, honors and estates, were distributed with a liberal hand among his needy and avaricious followers. The lives and fortunes of the ancient inhabitants, became thus, subject to the will of the usurper, and no stipulations were made to protect and secure them from the most wanton violations. Hence, Sir, arose the successful struggles in the reign of John, and to this source may be traced the subsequent exertions of the people for the recovery of their liberties, when Charles endeavored totally to destroy, and the Prince of Orange at the celebrated æra of the British revolution, was invited to support them, upon the principles declared in the bill of rights. Some authors indeed, have argued that the liberties of the people were derived from the prince, but how they came into his hands is a mystery which has not been disclosed. Even on that principle, however, it has occasionally been found necessary to make laws for the security of the subject,—a necessity that has produced the writ of Habeas Corpus, which affords an easy and immediate redress for the unjust imprisonment of the person, and the trial by jury, which is the fundamental security for every enjoyment that is valuable in the con-

templation of a freeman. These advantages have not been obtained by the influence of a bill of rights, which, after all, we find is an instrument that derives its validity only from the sanction and ratification of the prince. How different then is our situation from the circumstances of the British nation? As soon as the independence of America was declared in the year 1776, from that instant all our natural rights were restored to us, and we were at liberty to adopt any form of government to which our views or our interests might incline us.—This truth, expressly recognized by the act declaring our independence, naturally produced another maxim, that whatever portion of those natural rights we did not transfer to the government, was still reserved and retained by the people; for, if no power was delegated to the government, no right was resigned by the people; and if a part only of our national rights was delegated, is it not absurd to assert that we have relinquished the whole? Where then is the necessity of a formal declaration that those rights are still retained, of the resignation of which no evidence can possibly be produced? Some articles indeed, from their pre-eminence in the scale of political security, deserve to be particularly specified, and these have not been omitted in the system before us. The definition of treason, the writ of habeas corpus, and the trial by jury in criminal cases, are here expressly provided for; and in going thus far solid foundation has been laid. The ingenuity of the gentlemen who are inimical to the proposed constitution may serve to detect an error, but can it furnish a remedy? They have told us that a bill of rights ought to have been annexed; but, while some are for this point, and others for that, is it not evidently impracticable to frame an instrument which will be satisfactory to the wishes of every man, who thinks himself competent to propose and obviate objections. Sir, it is enough for me that the great cardinal points of a free government are here secured, without the useless enumeration of privileges under the popular appellation of a bill of rights.

1. Printed: *Pennsylvania Herald*, 2 January 1788. For the full speech, see RCS:Pa., 429–33.

Benjamin Rush: Speech in the Pennsylvania Convention 30 November 1787[1]

I believe, Mr. President, that of all the treaties which have ever been made, William Penn's was the only one, which was contracted without parchment; and I believe, likewise, it is the only one that has ever been faithfully adhered to. As it has happened with treaties, so, Sir, has it happened with bills of rights, for never yet has one been made which

has not, at some period or other, been broken. The celebrated magna charta of England was broken over and over again, and these infractions gave birth to the petition of rights. If, indeed, the government of that country has not been violated for the last hundred years, as some writers have said, it is not owing to charters or declarations of rights, but to the balance which has been introduced and established in the legislative body. The constitution of Pennsylvania, Mr. President, is guarded by an oath,[2] which every man employed in the administration of the public business, is compelled to take; and yet, sir, examine the proceedings of the council of censors,[3] and you will find innumerable instances of the violation of that constitution, committed equally by its friends and enemies. In truth then, there is no security but in a pure and adequate representation; the checks and all the other desiderata of government, are nothing but political error without it, and with it, liberty can never be endangered. While the honorable convention, who framed this system, were employed in their work, there are many gentlemen who can bear testimony that my only anxiety was upon the subject of representation; and when I beheld a legislature constituted of three branches,[4] and in so excellent a manner, either directly or indirectly, elected by the people, and amenable to them, I confess, Sir, that here I chearfully reposed all my hopes and confidence of safety. Civilians[5] having taught us, Mr. President, that occupancy was the origin of property, I think, it may likewise be considered as the origin of liberty; and as we enjoy all our natural rights from a pre-occupancy, antecedent to the social state, in entering into that state, whence shall they be said to be derived? would it not be absurd to frame a formal declaration that our natural rights are acquired from ourselves? and would it not be a more rediculous solecism to say, that they are the gift of those rulers whom we have created, and who are invested by us with every power they possess? Sir, I consider it as an honor to the late convention, that this system has not been disgraced with a bill of rights; though I mean not to blame, or reflect upon those states, which have encumbered their constitutions with that idle and superfluous instrument. One would imagine however, from the arguments of the opposition that this government was immediately to be administered by foreigners,—strangers to our habits and opinions, and unconnected with our interest and prosperity. These apprehensions, Sir, might have been excused while we were contending with Great Britain; but, at this time, they are applicable to all governments, as well as that under consideration; and the arguments of the honorable members are, indeed, better calculated for an Indian council fire, than the meridian of this refined and enlightened convention.

1. Printed: *Pennsylvania Herald*, 5 January 1788.
2. See Section 40 of the Pennsylvania constitution of 1776 (Thorpe, V, 3090).
3. Elected every seven years, the Council of Censors would determine if the constitution had been violated, order impeachments, recommend the repeal of laws that appeared to violate the constitution, and could call a convention to amend the constitution.
4. A reference to the House of Representatives, Senate, and the presidential veto.
5. A person learned in civil law.

Jasper Yeates: Speech in the Pennsylvania Convention 30 November 1787[1]

The objections hitherto offered to this system, Mr. President, may, I think, be reduced to these general heads: first, that there is no bill of rights, and secondly, that the effect of the proposed government will be a consolidation, and not a confederation of the states. Upon the first head, it appears to me, that great misapprehension has arisen, from considering the situation of Great Britain to be parallel to the situation of this country, whereas the difference is so essential that a bill of rights, which was there both useful and necessary, becomes here at once useless and unnecessary. In England a power (by what means it signifies little) was established paramount to that of the people, and the only way which they had to secure the remnant of their liberties was, on every opportunity, to stipulate with that power for the uninterrupted enjoyment of certain enumerated privileges. But our case is widely different, and we find that, upon the opinion of this difference, seven of the thirteen United States have not added a bill of rights to their respective constitutions. Nothing, indeed, seems more clear to my judgment than this, that in our circumstances, every power which is not expressly given is, in fact, reserved. But it is asked, as some rights are here expressly provided for, why should not more? In truth, however, the writ of *habeas corpus* and the trial by jury in criminal cases cannot be considered as a bill of rights, but merely as a reservation on the part of the people and a restriction on the part of their rulers; and I agree with those gentlemen who conceive that a bill of rights, according to the ideas of the opposition, would be accompanied with considerable difficulty and danger; for, it might be argued at a future day by the persons then in power—you undertook to enumerate the rights which you meant to reserve, the pretension which you now make is not comprised in that enumeration, and, consequently, our jurisdiction is not circumscribed.

1. Printed: *Pennsylvania Herald*, 5 January 1788. For the full speech, see RCS:Pa., 436–39.

James Wilson: Speech in the Pennsylvania Convention
4 December 1787[1]

I shall take this opportunity, of giving an answer to the objections already urged against the constitution; I shall then point out some of those qualities, that entitle it to the attention and approbation of this convention; and after having done this, I shall take a fit opportunity of stating the consequences, which I apprehend will result from rejecting it, and those which will probably result from its adoption. I have given the utmost attention to the debates and the objections, that from time to time have been made by the three gentlemen who speak in opposition. I have reduced them to some order, perhaps not better than that in which they were introduced. I will state them; they will be in the recollection of the house, and I will endeavour to give an answer to them—in that answer, I will interweave some remarks, that may tend to illucidate the subject.

A good deal has already been said, concerning a bill of rights; I have stated, according to the best of my recollection, all that passed in convention, relating to that business. Since that time, I have spoken with a gentleman, who has not only his memory, but full notes, that he had taken in that body; and he assures me, that upon this subject, no direct motion was ever made at all; and certainly, before we heard this so violently supported out of doors, some pains ought to have been taken to have tried its fate within; but the truth is, a bill of rights would, as I have mentioned already, have been not only unnecessary but improper. In some governments it may come within the gentleman's idea, when he says it can do no harm; but even in these governments, you find bills of rights do not uniformly obtain; and do those states complain who have them not? Is it a maxim in forming governments, that not only all the powers which are given, but also that all those which are reserved, should be enumerated? I apprehend, that the powers given and reserved, form the whole rights of the people, as men and as citizens. I consider, that there are very few, who understand the *whole* of these rights. All the political writers, from Grotius and Puffendorf, down to Vattel, have treated on this subject; but in no one of those books, nor in the aggregate of them all, can you find a complete enumeration of rights, appertaining to the people as men and as citizens.

There are two kinds of government; that where general power is intended to be given to the legislature, and that, where the powers are particularly enumerated. In the last case, the implied result is, that nothing more is intended to be given, than what is so enumerated, unless it results from the nature of the government itself. On the other

hand, when general legislative powers are given, then the people part with their authority, and on the gentleman's principle of government, retain nothing. But in a government like the proposed one, there can be no necessity for a bill of rights. For, on my principle, the people never part with their power. Enumerate all the rights of men!—I am sure, sir, that no gentleman in the late convention would have attempted such a thing. I believe the honorable speakers in opposition on this floor, were members of the assembly which appointed delegates to that convention; if it had been thought proper to have sent them into that body, how luminous would the *dark conclave*[2] have been! So the gentleman has been pleased to denominate that body. Aristocrats as they were, they pretended not to define the rights of those who sent them there. We are asked repeatedly, what *harm* could the addition of a bill of rights do? If it can do no *good*, I think that a sufficient reason, to refuse having any thing to do with it. But to whom are we to report this bill of rights, if we should adopt it? Have we authority from those who sent us here to make one?

It is true we may propose, as well as any other private persons; but how shall we know the sentiments of the citizens of this state and of the other states? are we certain that any one of them will agree with our definitions and enumerations?

In the second place, we are told, that there is no check upon the government but the people; it is fortunate, sir, if their superintending authority is allowed as a check: But I apprehend that in the very construction of this government, there are numerous checks. Besides those expressly enumerated, the two branches of the legislature are mutual checks upon each other. But this subject will be more properly discussed, when we come to consider the form of government itself; and then I mean to shew the reason, why the right of habeas corpus was secured by a particular declaration in its favor.

In the third place we are told, that there is no security for the rights of conscience. I ask the honorable gentleman, what part of this system puts it in the power of congress to attack those rights? when there is no power to attack, it is idle to prepare the means of defence.

1. Printed: Lloyd, *Debates*, 59–61. For the entire speech, see RCS:Pa., 465–85.

2. The phrase "dark conclaves," which described the Constitutional Convention, was employed by such leading Antifederalists as "Centinel" and "Philadelphiensis" (CC:501, 507, 547).

James Wilson: Speech in the Pennsylvania Convention 7 December 1787[1]

The convention thought further (for on this very subject, there will appear caution, instead of imprudence in their transactions) they con-

sidered, that if suspicions are to be entertained, they are to be entertained with regard to the objects in which government have separate interests and separate views, from the interests and views of the people. To say that officers of government will oppress, when nothing can be got by oppression, is making an inferrence, bad as human nature is, that cannot be allowed. When persons can derive no advantage from it, it can never be expected they will sacrifice either their duty or their popularity.

Whenever the general government can be a party against a citizen, the trial is guarded and secured in the constitution itself, and therefore it is not in its power to oppress the citizen. In the case of treason, for example, though the prosecution is on the part of the United States, yet the congress can neither define nor try the crime. If we have recourse to the history of the different governments that have hitherto subsisted, we shall find that a very great part of their tyranny over the people, has arisen from the extension of the definition of treason. Some very remarkable instances have occurred, even in so free a country as England. If I recollect right, there is one instance that puts this matter in a very strong point of view. A person possessed a favorite buck, and on finding it killed, wished the horns in the belly of the person who killed it; this happened to be the king; the injured complainant was tried and convicted of treason, for wishing the king's death.

I speak only of free governments, for in despotic ones, treason depends entirely upon the will of the prince. Let this subject be attended to, and it will be discovered where the dangerous power of the government operates to the oppression of the people. Sensible of this, the convention has guarded the people against it, by a particular and accurate definition of treason.

It is very true, that trial by jury is not mentioned in civil cases; but I take it, that it is very improper to infer from hence, that it was not meant to exist under this government. Where the people are represented—where the interest of government cannot be separate from that of the people, (and this is the case in trial between citizen and citizen) the power of making regulations with respect to the mode of trial, may certainly be placed in the legislature; for I apprehend that the legislature will not do wrong in an instance, from which they can derive no advantage. These were not all the reasons that influenced the convention to leave it to the future congress to make regulations on this head.

By the constitution of the different states, it will be found that no particular mode of trial by jury could be discovered that would suit

them all. The manner of summoning jurors, their qualifications, of whom they should consist, and the course of their proceedings, are all different, in the different states; and I presume it will be allowed a good general principle, that in carrying into effect the laws of the general government by the judicial department, it will be proper to make the regulations as agreeable to the habits and wishes of the particular states as possible; and it is easily discovered that it would have been impracticable, by any general regulation, to have given satisfaction to all. We must have thwarted the custom of eleven or twelve to have accommodated any one. Why do this, when there was no danger to be apprehended from the omission? We could not go into a particular detail of the manner that would have suited each state.

Time, reflection and experience, will be necessary to suggest and mature the proper regulations on this subject; time and experience were not possessed by the convention, they left it therefore to be particularly organized by the legislature—the representatives of the United States, from time to time, as should be most eligible and proper. Could they have done better?

I know in every part, where opposition has risen, what a handle has been made of this objection; but I trust upon examination it will be seen that more could not have been done with propriety. Gentlemen talk of bills of rights! What is the meaning of this continual clamour, after what has been urged, though it may be proper in a single state, whose legislature calls itself the sovereign and supreme power? yet it would be absurd in the body of the people, when they are delegating from among themselves persons to transact certain business, to add an enumeration of those things, which they are not to do. "But trial by jury is secured in the bill of rights of Pennsylvania; the parties have a right to trials by jury, which OUGHT to be held sacred,"[2] and what is the consequence? There has been more violations of this right in Pennsylvania, since the revolution, than are to be found in England, in the course of a century.

1. Printed: Lloyd's *Debates*, 93–95. For the entire speech, see RCS:Pa., 514–21.
2. Section 11, BoR, I, 96.

Cumberland County Petition Read in the Pennsylvania Convention 12 December 1787

The *Carlisle Gazette* on 28 November 1787 printed a petition by residents of Cumberland County supporting ratification of the Constitution (RCS:Pa., 298–99). The petition printed here, which appeared in the *Gazette* on 5 December, is a response to the previous petition. This petition was probably one of the

petitions favoring amendments to the Constitution read in the Convention at the afternoon session on 12 December (RCS:Pa., 589).

Messieurs PRINTERS.

In perusing your useful paper of the 28th instant, I observed a petition signed, as is said, by the clergy, principal burgesses, members of the learned professions, and principal inhabitants of this place; and that except three or four persons to whom it was presented, all unanimously signed said petition.—In order that it may be seen whether this is actually the case or not, I request you would insert the following petition, signed by upwards of one hundred and seventy in Carlisle, who in their humble opinion, possess equally good means of information, and are as free from any private or party interest, as these respectable signers.—In complying with the above, you will oblige one of your readers.

To the Honourable Convention of the State of Pennsylvania.

The Petition of the Subscribers Inhabitants
of the county of Cumberland,

Most Humbly Sheweth.

That they consider the present political circumstances of the United States, as very interesting to every citizen who sincerely desires to support our Union, and at the same time to secure to the people the future enjoyment of their unalienable rights and liberties; and as the good of the people is the great end of all good government, and that must be best which affords the best security to their rights and freedom; a solicitude for their own permanent political happiness, and that of their fellow citizens, has induced your Petitioners to lay before your Honourable House, some objections to the adoption of the Constitution, as proposed by the late Continental Convention.

And first, There is no declaration of rights, to secure to the people the liberty of worshipping God according to their consciences; and the sixth article of said Constitution declares "that this Constitution and the Laws of the United States which shall be made in pursuance thereof, &c." Therefore the Bill of Rights contained in the Constitutions of the several States are no security, nor are the people secured in the privileges of the Common Law.

Secondly, The eighth section of the first article of this Constitution declares, that the Congress shall have power to make all laws 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. This, as we conceive, unlimited powers given to Congress, in which they are to be the judges of what laws shall be necessary and proper, uncontrouled

by a Bill of Rights, submits every right of the people of these states, both civil and sacred to the disposal of Congress, who may exercise their power to the expulsion of the jury—trial in civil causes—to the total suppression of the liberty of the press; and to the setting up and establishing of a cruel tyranny, if they should be so disposed, over all the dearest and most sacred rights of the citizens.

Thirdly, The fourth section of the first article provides, that the Times, Places, and Manner for holding Elections, for Senators and Representatives, shall be prescribed, &c. Here appears to be scarcely the shadow of Representation provided, because the Congress may at their pleasure, order the Election for the Representatives of the State of Pennsylvania, to be held in Philadelphia, where it will be impossible for the people of the State to assemble for the purpose; and thus the citizens of Philadelphia would be represented, and scarcely any part else of the Commonwealth: The MANNER and TIME may prevent three-fourths of the present Electors of the State, from giving a vote as long as they live.

These objections, with many others which might be made, induce your Petitioners to pray this Honourable Convention not to adopt the said proposed plan, until a Bill of Rights shall be framed and annexed, so as to secure to the citizens of each state, such rights as have been mentioned (we mean to say) those relating to conscience, trial by jury, in civil causes, as well as in criminal cases; the liberty of the press, and such other liberties as to you may seem necessary to be secured and preserved. And your Petitioners as in duty bound shall ever pray, &c. &c.

Robert Whitehill: Speech in the Pennsylvania Convention 12 December 1787[1]

Mr. Whitehill then read, and offered as the ground of a motion for adjourning to some remote day, the consideration of the following articles, which he said, might either be taken, collectively, as a bill of rights, or, separately, as amendments to the general form of government proposed.

1. 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 constitutions of the several states, which provide for the preservation of liberty in matters of religion.

2. That in controversies respecting property, 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.

3. 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 or his council; to be confronted with the accusers and witnesses, to call for evidence in his favor, and a speedy trial, by an impartial jury of the vicinage, without whose unanimous consent, he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

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

5. 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.

6. That the people have a right to the freedom of speech, of writing, and of publishing their sentiments, therefore, the freedom of the press shall not be restrained by any law of the United States.

7. That 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 or 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 be governed by the civil power.

8. 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 not inclosed, 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.

9. 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 exported and imported, and that no taxes, except imposts and duties upon goods imported and exported, and postage on letters shall be levied by the authority of Congress.

10. That elections shall remain free, that the house of representatives be properly increased in number, and that the several states shall have power to regulate the elections for senators and representatives, with-

out being controuled either directly or indirectly by any interference on the part of Congress, and that elections of representatives be annual.

11. 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.

12. 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 attendance) and also that the judges be made compleatly independant.

13. That no treaties 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 contradictory to the constitution of the United States, or the constitutions of the individual states.

14. That the judiciary power of the United States shall be confined to cases affecting ambassadors, other public ministers and consuls, to cases of admiralty and maratime 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 descents and distributions of the effects of deceased persons, the title of lands or goods, or the regulation of contracts in the individual states.

15. 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.

Some confusion arose on these articles being presented to the chair, objections were made by the majority to their being officially read, and, at last, Mr. Wilson desired that the intended motion might be reduced to writing, in order to ascertain its nature and extent. Accordingly, Mr. Whitehill drew it up, and it was read from the chair in the following manner.

"That this Convention do adjourn to the day of next, then to meet in the city of Philadelphia, in order that the propositions for amending the proposed constitution may be considered by the people of this state; that we may have an opportunity of knowing what amendments or alterations may be proposed by other states, and that these propositions, together with such other amendments as may be proposed by other states, may be offered to Congress, and taken into consideration by the United States, before the proposed constitution shall be finally ratified."

1. Printed: *Pennsylvania Herald*, 15 December 1787.

A Countryman III
New Haven Gazette, 29 November 1787 (excerpt)[1]

To the PEOPLE *of* Connecticut.

The same thing once more.—I am a plain man, of few words; for this reason perhaps it is, that when I have said a thing I love to repeat it. Last week[2] I endeavoured to evince, that the only surety you could have for your liberties must be in the nature of your government; that you could derive no security from bills of rights, or stipulations, on the subject of a standing army, the liberty of the press, trial by jury, or on any other subject. Did you ever hear of an absolute monarchy, where those rights which are proposed by the pigmy politicians of this day, to be secured by stipulation, were ever preserved? Would it not be mere trifling to make any such stipulations, in any absolute monarchy?

On the other hand, if your interest and that of your rulers are the same, your liberties are abundantly secure. Perhaps the most secure when their power is most compleat. Perhaps a provision that they should never raise troops in time of peace, might at some period embarrass the public concerns and endanger the liberties of the people. It is possible that in the infinite variety of events, it might become improper strictly to adhere to any one provision that has ever been proposed to be stipulated. At all events, the people have always been perfectly safe without any stipulation of the kind, when the rulers were interested to make them safe; and never otherwise.

No people can be more secure against tyranny and oppression in their rulers than you are at present; and no rulers can have more supreme and unlimited authority than your general assembly have. . . .

1. Reprinted: *New York Journal*, 5 December. For the entire piece, see CC:305. For the authorship of "A Countryman," see CC:261.

2. See "A Countryman" II, 22 November (BoR, II, 131–33).

Editors' Note
The Virginia General Assembly and a Second General Convention
30 November–27 December 1787

The Virginia legislative resolutions of 25–31 October 1787 calling a state Convention did not provide for the payment or privileges of the Convention delegates. On 30 November, the House of Delegates, according to the order of the day, went into a committee of the whole house on the state of the commonwealth and discussed the issue of the payment of the state Convention delegates. Samuel Hopkins, Jr. introduced resolutions to provide payment for the delegates to the state Convention and for delegates to a second "fœderal convention, in case such a convention should be judged necessary" to consider amendments to the Constitution. The resolutions also called on the General Assembly to provide for the expenses of "deputies to confer with the convention or conventions of any other state or states in the union" if the state Convention "should deem it proper." Patrick Henry and George Mason seconded Hopkins' motion.

In the debate that followed, Federalists urged that the resolutions be stated in "General terms which should not discover the sense of the house on the Subject." They believed that the resolutions implied support for amendments. George Mason countered by saying that the resolutions were "not declaratory of our opinion." After considerable debate, the committee of the whole house agreed to the resolutions, which the House agreed to by a sixteen-vote majority. The House then appointed a committee of eight to bring in a bill pursuant to the resolutions.

On 4 December, according to order, Patrick Henry reported the committee's bill, which provided that the state Convention could propose amendments to the Constitution and appoint delegates to a second federal convention. The bill also made provision for deputies to attend a second federal convention and for deputies who might be appointed to confer with other state conventions.

The House debated and amended the bill in the committee of the whole house on 7 December, where all references were stricken to a second convention or the appointment of delegates to confer with other conventions. The amendments were considered by the committee on 8 December and amended further. The amended bill, still not mentioning amendments or a second convention, provided for "Such reasonable expences as may be incurred in case the Convention to meet in this state on the first Munday in June next should deem it necessary to hold any Communications with any of the sister states or the Conventions thereof which may be then mett—or should in any other manner incur any expence in collecting the sentiments of the union respecting the proposed Federal Constitution." On 11 December the engrossed bill was passed unanimously. The Senate accepted it the next day.

On 11 December, George Lee Turberville reported that Patrick Henry had declared his intention of bringing in a bill to promote a second federal convention, and "that the speakers of the two houses shou'd form a Committee of Correspondence to communicate with our sister states on that subject" (George Lee Turberville to James Madison, 11 December, BoR, II, 193). On

26 December Meriwether Smith moved that the legislature send a circular letter to the other state legislatures, "intimating the likelihood of amendment here." The House, however, "changed" his motion (Edmund Randolph to James Madison, 27 December, RCS:Va., 275). On 27 December the legislature instructed Governor Randolph to forward the act of 12 December to the state executives and legislatures. Accordingly, Randolph sent a broadside copy of the act to each state executive on 27 December and enclosed another copy to be given to each legislature.

For the complete legislative proceedings, see RCS:Va., 183–93n.

Portland, Maine, Cumberland Gazette, 30 November 1787

Mr. WAIT,[1] In your paper of the 15th of November I saw some observations on Mr. Gerry's letter addressed to the President of the Senate, and Speaker of the House of Representatives of the Commonwealth of Massachusetts; among which I particularly noticed an answer to Mr. Gerry's 3d important question;[2] and a wish expressed that a *Bill of Rights* might be added to the Federal Constitution. The writer fully comprehending himself, I imagine, supposed every body else would comprehend him also. But I confess, at first sight, I did not; perhaps others did not—Upon a second reading I imagined his idea was that the United States should by a Bill of Rights secure to themselves their privileges, as the citizens of the several States had already secured to themselves their liberties.

To make the idea still more explicit—As the citizens of the several States had established Legislatures for themselves, investing them with certain powers; but at the same time reserving to themselves certain rights, which the legislature might not infringe, or intermeddle with upon their PERIL: So *now* the United States, being about to establish a LEGISLATURE GENERAL, should reserve to THEMSELVES, by a BILL, certain Rights which the general legislature might not infringe, or intermeddle with upon THEIR PERIL.

If this was his idea, which I am *now* fully persuaded it was, I think it just. It will secure dignity and importance to the States; it will insure perfect liberty to the people; and the exercise of republican virtue will render them intirely happy as a nation.—Each State will be too important a personage to be imposed upon, and consequently their liberty will be secure. Collectedly they will be respectable, and have their rank among the nations of the world.

A Bill of Rights upon those principles cannot be difficult to be formed. It will be short; because the number of personages concerned is small—but thirteen in number at present. It will be simple and easy; because no perplexity can attend it upon honest views. I therefore hope

the idea will be attended to.—It is simply this:—The inhabitants of the several States wished for Government; and established it on principles beneficial and safe to themselves.—The thirteen united States wish for a general Government; and I flatter myself they will establish one equally beneficial and safe to the Union—securing to themselves, by a Bill of Rights, their privileges, as the citizens of the several States have secured to themselves their liberties.

Such a Bill of Rights is undoubtedly *necessary*—such a Bill of Rights will undoubtedly take place, or the Constitution, which I revere as *incomparable*, will be *politically* damned;—because I think my countrymen sensible.—In vain will a particular citizen complain of injury, after the Constitution is once adopted; but a State may make the Congress tremble, if they dare to incroach.

A word to the wise is sufficient; and wise men will never admit such a Constitution, *however good*, without the security of a Bill of Rights.

1. Thomas B. Wait, the printer of the *Cumberland Gazette*.

2. For Gerry's objections, see BoR, II, 50–52. The *Cumberland Gazette* reprinted the objections on 9 November and a response to the objections on 15 November (RCS:Mass., 245–47). The 15 November response quoted Gerry's third question: "Whether in lieu of the fœderal and State governments, the national Constitution now proposed shall be substituted without amendment?"

It answered the question as follows: "If a bill of rights be thought necessary, it will undoubtedly be added: and for my own part, I wish it may be; for I differ from Mr. Wilson in opinion (whose performance I admire) that Congress have no other powers but what are expressly granted by [the] Constitution."

Many Customers

Philadelphia Independent Gazetteer, 1 December 1787 (excerpts)[1]

Mr. PRINTER, *It has been often said, concerning the proposed constitution, that those who complained of its faults, should suggest amendments, a number of citizens, warmly desirous of promoting the establishment of a well organized federal government; and perceiving in each other, sentiments inclining to harmony, formed a committee of their own members to examine and consider the proposed constitution, with instructions to report such amendments, and such only as they should deem absolutely necessary to safety in the adoption of it, paying equal regard to its practicability and efficiency as a system of government, on the one hand, and to those rights which are essential to free citizens in a state of society, on the other.*

The report having been read, a motion was made to adopt it; but after some debate, in which some of the members declared that their minds had already undergone some changes, and that their opinions were not yet satisfactorily established, it was thought proper that farther time should be taken to deliberate and advise with their fellow citizens on a subject of such high importance and

general concernment. It was therefore agreed that the question should be postponed for further consideration, and that in the meantime the report be published—By giving it a place in your paper you will oblige

MANY CUSTOMERS.

The committee to whom was referred the plan proposed by the late general convention, for the government of the United States, report,

That in the examination of the said plan, they have conceived it to be their duty to exercise the freedom which the magnitude of the trust reposed in them required; at the same time, that they have kept constantly in mind, the respect and deference due to the great characters who formed the plan, and that candor and liberality of construction which are necessary in forming a just opinion of a national compact in which the citizens of every state in the union, having an equal interest, are equally parties.

Under these impressions, your committee have taken the said plan into their most serious consideration; and though they find much in it which merits approbation, yet the duty they owe to their constituents and to their country, obliges them to propose some alterations, which they should deem necessary, considering it merely with regard to practicability as a system of government: and when to this consideration are added the proprity of preserving to the respective states so much of their sovereignty as may be necessary to enable them to manage their internal concerns, and to perform their respective functions as members of a federal republic, and of preserving to individuals such rights as are essential to freemen in a state of society, the necessity of making such alterations appear to your committee irresistibly strong.

There are four points in which your committee apprehend alterations are absolutely necessary before the plan can with safety be put in operation, namely:—

Respecting Elections,

Internal Taxation,

The Judicial Department,

The Legislative Power, so far as it is independent of the House of Representatives.

Divers other amendments might with propriety be proposed, some of which might be comprehended in a bill of rights, or table of fundamental principles, so declared and established as to govern the construction of the powers given by the constitution; but your committee avoid to mention them in detail, because if suitable amendments are made respecting the points enumerated, the necessity for going farther on the present occasion, though not entirely done away, will be so far diminished, as that it may be thought advisable to leave them to future

consideration, on such suggestions as time and experience shall offer. . . .

And your committee submit the following resolutions to consideration.

That the foregoing amendments to the plan of government formed by the late General convention, be transmitted to the United States in Congress assembled.

That Congress be requested to recommend to the several states in the union, that delegates be elected by the people of the said states respectively, to meet in general convention at on the day of next, to take into consideration the said amendments, together with such amendments as shall be proposed by the several state conventions, and to revise and amend the said plan of government in such manner as they shall agree upon, not altering the form as it now stands, farther than shall be necessary to accommodate it to such of the amendments which shall be so proposed to them, as they, or the representations of any nine or more states, shall agree to adopt; and that in case the plan so agreed upon shall be assented to by the vote of every state which shall be represented in such convention, they shall have power, without further reference to the people, to declare the same the constitution or frame of government of the United States, and it shall thereupon be accepted and acted upon accordingly.

1. This item was also printed in the *Pennsylvania Herald* on the same day and reprinted in the *Pennsylvania Packet*, 4 December; *New York Morning Post*, 10 December; *Massachusetts Centinel*, 15 December; *New York Journal*, 20 December; and the Massachusetts *Salem Mercury*, 25 December. For the entire item, see RCS:Pa., 306–9.

Archibald Stuart to James Madison
Richmond, Va., 2 December 1787 (excerpt)[1]

. . . A Resolution was brought forward the day before yesterday for paying the members to Convention in June their Wages & securing to them Certain priviledges &c seconded by P:H[2] & Mason which after making Provision for the purposes aforesaid goes farther & sais that should the Convention think proper to propose Amendments to the Constitution this state will make provision for carrying the same into effect & that Money shall be advanced for the Support of Deputies to the Neighbouring States &c[3]—This Many of us opposed as improper & proposed that the same provision should be made in General terms which should not discover the sense of the house on the Subject but after a Long Debate the point was carried against us by a Majority of sixteen—In the Course of the Debate P:Hy: Observed that if this Idea

was not held forth our southern neighbours might be driven to despair seeing no door open to safety should they disapprove the new Constitution—Mason on the subject was less candid than ever I knew him to be—from the above mentioned Vote there appears to be a Majority vs the Govt. as it now Stands & I fear since they have discovered their Strength they will adopt other Measures tending to its prejudice from this circumstance I am happy to find Most of the States will have decided on the Question before Virginia for I now have my doubts whether She would afford them as usual a good Example. . . .

1. RC, Madison Papers, DLC. For longer excerpts from this letter, see RCS:Va., 195–96. For the entire letter, see Rutland, *Madison*, X, 290–93.
2. Patrick Henry.
3. For this legislative action, see BoR, II, 175–76.

Samuel Adams to Richard Henry Lee
Boston, 3 December 1787[1]

I am to acknowledge your several Favours of the 5th and 27 of October,[2] the one by the Post and the other by our worthy Friend Mr Gerry. The Session of our General Court which lasted six Weeks, and my Station there[3] requiring my punctual & constant Attendance, prevented my considering the *new* Constitution as it is already called, so closely as was necessary for me before I should venture an Opinion.

I confess, as I enter the Building I stumble at the Threshold. I meet with a National Government, instead of a fœderal Union of Sovereign States. I am not able to conceive why the Wisdom of the Convention led them to give the Preference to the former before the latter. If the several States in the Union are to become one entire Nation, under one Legislature, the Powers of which shall extend to every Subject of Legislation, and its Laws be supreme & controul the whole, the Idea of Sovereignty in these States must be lost. Indeed I think, upon such a Supposition, those Sovereignties ought to be eradicated from the Mind; for they would be Imperia in Imperio justly deemd a Solecism in Politicks, & they would be highly dangerous, and destructive of the Peace Union and Safety of the Nation. And can this National Legislature be competent to make Laws for the *free* internal Government of one People, living in Climates so remote and whose "Habits & particular Interests" are and probably always will be so different. Is it to be expected that General Laws can be adapted to the Feelings of the more Eastern & the more Southern Parts of so extensive a Nation? It appears to me difficult if practicable. Hence then may we not look for Discontent, Mistrust, Disaffection to Government and frequent Insurrections,

which will require standing Armies to suppress them in one Place & another where they may happen to arise. Or if Laws could be made, adapted to the local Habits Feelings. Views & Interests of those distant Parts, would they not cause Jealousies of Partiality in Government which would excite Envy and other malignant Passions productive of Wars and fighting. But should we continue distinct sovereig[n] States, confederated for the Purposes of mutual Safety and Happiness, each contributing to the federal Head such a Part of its Sovereignty as would render the Government fully adequate to those Purposes and *no more*, the People would govern themselves more easily, the Laws of each State being well adapted to its own Genius & Circumstances, and the Liberties of the United States would be more secure than they can be, as I humbly conceive, under the proposed new Constitution. You are sensible, Sir, that the Seeds of Aristocracy began to spring even before the Conclusion of our Struggle for the natural Rights of Men. Seeds which like a Canker Worm lie at the Root of free Governments. So great is the Wickedness of some Men, & the stupid Servility of others, that one would be almost inclined to conclude that Communities cannot be free. The few haughty Families, think *They* must govern. The Body of the People tamely consent & submit to be their Slaves. This unravels the Mystery of Millions being enslaved by the few! But I must desist—My weak hand prevents my proceeding further at present. I will send you my poor Opinion of the political Structure at another Time. In the Interim oblige me with your Letters; & present mine & Mrs A's best Regards to your Lady & Family, Colo Francis,[4] Mr A. L.[5] if with you, & other Friends.

[P.S.] As I thought it a Piece of Justice I have venturd to say that I had often heard from the best Patriots from Virginia that Mr G Mason was an early active & able Advocate for the Liberties of America,

1. RC, Lee Papers, American Philosophical Society, Philadelphia. Adams's draft letter, which contains some variations from the recipient's copy, is in the Samuel Adams Papers, New York Public Library. In his last letter to Adams, Lee had requested that "When you are pleased to write to me, your letter, by being enclosed to our friend Mr. Osgood of the Treasury here, will be for warded *safely* to me in Virginia, for which place I shall set out from hence on the 4th of next month" (27 October 1787). Agreeable to this request, Adams sent his response to Lee as an enclosure in a letter to Samuel Osgood. Since Lee had already left New York, Osgood gave the letter to Arthur Lee who was to forward it to his brother in Virginia (Osgood to Adams, 5 January 1788, CC:417). Richard Henry Lee received Adams's 3 December letter on "the last of January" 1788 (Lee to Adams, 28 April, BoR, II, 435–37).

2. See BoR, II, 18–20, 64–66.

3. Adams was President of the Massachusetts Senate.

4. Colonel Francis Lightfoot Lee was Richard Henry Lee's brother.

5. Arthur Lee.

One of the Common People
Boston Gazette, 3 December 1787[1]

Messieurs EDES,[2] A writer in the Centinel who calls himself "*One of the middle-interest*," has gone into a long inquiry to find out "*where we learned the idea of a Bill of Rights.*" It is of little moment where it was learned, since we are possessed of so important and so invaluable a discovery, to guard the *people* against the increasing powers of artificial aristocracy, whose seeds are every where disseminated in free states. This writer thinks it would be superfluous to preface or combine with the federal constitution, a *bill of rights*, because the state constitution is already guarded by one.—If the new plan is adopted, every one knows the state constitution will be very materially and essentially altered; and so far will the security of our rights be precarious and dependent on meer acts of congress, which, without this barrier, may, and by the present tenor of the new constitution, will render our priviledges as undefined as this writer says are those of the subjects of England; which are only to be "*collected from meer opinions of the learned and contradictory authors.*" If we alienate a great part of the powers, at present contained in our state constitution, and vest them in congress, why is it not as necessary that those alienated powers should be secured and limited by a declaration of rights, as that the remaining powers which are left in the hands of the state government should be thus guarded, especially if the greater half are alienated? This writer says, a bill of rights is not necessary, because the first section declares "*that all legislative powers herein* GIVEN (viz. given in the new constitution) *shall be vested in congress*;" and then says, "*the legislative powers* NOT GIVEN *are not surely in congress.*"—But will he say that the powers *therein given* are *clearly* and *explicitly* defined? that the *boundary line* of the legislative jurisdiction *given* to congress is so plain as not to be mistaken or abused? that it will never *clash* with the jurisdiction claimed by the legislature of this state? Is the following clause of such a nature as to have any fixed or definite limits? "*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.*"—Unless some additional guard is added to define the above clause, here will be a fine field for ambitious or designing men to extend the federal jurisdiction.—In the course of a few years our state legislature will be annihilated, together with our bill of rights, which this writer says is a sufficient security: our *rights* will then depend on the *virtue* of the fed-

eral legislature; our *privileges* will then be sought after in a mass of mutilated laws, in *volumes of contradictory reports of the learned*. When this federal government is established, we shall have *two* bodies to legislate for us, and unless the powers which *each* body will have a right to exercise, be clearly defined, we must expect nothing but rival discord and contention, until the federal authority gains the ascendancy, as above predicted; or what may be worse, a revolt from their domination. This writer asks—"*Where is the liberty of the press taken away?*" If congress have a right to controul it, they may be said to have a right to take it away.—Will not the United States Attorney have the power to prosecute any printer for a pretended libel against the United States? Will not a printer be triable for a pretended libel against any foreign minister or consul, or for a libel against any of the individual states, by a federal tribunal? Are not such prosecutions warranted by the following clause in the new constitution? "*all controversies wherein the United States shall be a party, all cases affecting foreign ministers and consuls, and all controversies between a citizen and a state,*" shall be cognizable before a federal tribunal.—Cannot congress by virtue of this clause, restrain all publick information of mal-administration? And will not congress have *absolute* uncontrouled power over printers, and every other person within the United States territory, where there will undoubtedly be a great city?

Never was the trial by jury in civil cases thought so lightly of in America as at this day: we have bled for it, and are now almost ready to trifle it away—because in cases of default (which implies a consent of parties) there is no trial by jury, we must give up that inestimable privilege in all civil cases whatever.—This is fine reasoning sure; because we will not have a jury when we do not want them, we shall not when we do—This gentleman cannot be serious when he asserts, that "*if it were to be expressed* WHAT *civil causes should be tried by jury, it might take a volume of laws, instead of an article of rights*;" If it did I would have the volume, rather than hazard the priviledge.—But I will ask whether it requires this volume of laws to express that privilege in our state constitution? and whether there would be any difficulty in having it declared, that the citizens of each state shall enjoy it conformably to the usage in the state where the tribunal shall be established? he says "*doubtless congress will make some general regulations in this matter,*" but it will be well to recollect that they may *unmake* them, or *not* make them too, if they please, and *when* they please; but if it is a part of the constitution, the *people alone* will have the power to change or annul it.—It is too great a privilege to be left at loose. I sincerely believe if the federal constitution which shall be *given*, be *clearly defined*, and a *boundary line* be marked out, declaratory of the extent of their jurisdiction, of the rights

which the state hold unalienable, and the privilege which the citizens thereof can never part with, the republick of America will last for ages, and be free.

1. Reprinted: *New York Journal*, 12 December; Philadelphia *Independent Gazetteer*, 14 December; Portland, Maine, *Cumberland Gazette*, 27 December. "One of the Common People" responds to "One of the Middling-Interest," *Massachusetts Centinel*, 28 November (BoR, II, 144–48).

2. Benjamin Edes, the printer of the *Boston Gazette*.

Philadelphiensis III

Philadelphia Freeman's Journal, 5 December 1787 (excerpts)[1]

. . . For if we adopt this plan of government in its present form; I say that we shall have reason to curse the day that America became independent. Horrid thought! that the greatest blessing God ever bestowed on a nation, should terminate in its misery and disgrace. Strange reverse this! that the freemen of America, *the favored of heaven*, should submit to a government so arbitrary in its embrio, that even *a bill of rights* cannot be obtained, to secure to the people their unalienable privileges. . . .

In the first place then it does not protect the people in those liberties and privileges that all freemen should hold sacred—The *liberty of conscience*, the *liberty of the press*, the *liberty of trial by jury, &c.* are all unprotected by this constitution. And in respect to protecting our *property* it can have no pretensions whatever to that; for the taxes must and will be so enormously oppressive, for supporting this expensive government, that the whole produce of our farms would not be sufficient to pay them. . . .

1. This essay, with slightly different italics, was also printed in the Philadelphia *Independent Gazetteer* on 5 December. It was reprinted in the Rhode Island *Providence Gazette* on 22 December and the Boston *American Herald* on 21 January 1788. For the entire piece, see CC:320. For an unnumbered item by "Philadelphiensis," which was also printed on 5 December in the *Independent Gazetteer*, immediately after "Philadelphiensis" III, see CC:237–C. For the authorship, circulation, and impact of "Philadelphiensis," see CC:237.

"Z"

Boston Independent Chronicle, 6 December 1787 (excerpt)

On 3 December the *Boston Gazette* published Benjamin Franklin's last speech in the Constitutional Convention, which was delivered on 17 September (CC:77). By quoting and commenting on selected passages of the speech, "Z" tried to demonstrate that Franklin had signed the Constitution even though he believed it to be seriously defective. Similar arguments were presented in anonymous pieces in the Portland, Maine, *Cumberland Gazette*, 6 December

(RCS:Mass., 375); *Massachusetts Gazette*, 14 December (RCS:Mass., 376–77); and *Pennsylvania Herald*, 19 December.

"Z" was reprinted in the *New Hampshire Gazette*, 12 December; *New York Morning Post*, 14 December; *New York Journal*, 17 December; Massachusetts *Worcester Magazine*, 3 January 1788; and Northampton, Mass., *Hampshire Gazette*, 16 January. For the entire piece, see CC:323.

"A Federalist" defended Franklin's decision to support an imperfect Constitution because the "distracted States" needed the proposed new system (*Boston Gazette*, 10 December [RCS:Mass., 375–76]). James Madison described "Z's" version of Franklin's speech as "both mutilated & adulterated so as to change both the form & the spirit of it" (to George Washington, 20 December, CC: 359).

Mess'rs. ADAMS & NOURSE, When I read Dr. FRANKLIN's address to the President of the late Convention, in the last Monday's Gazette, I was at a loss to judge, till I was informed by mere accident, from which of the contending parties it went to the press. "I confess," says the Doctor, (and observe the Printers tell us it was *immediately* before his signing) "I confess that I do not entirely approve of this Constitution at present." Surely, I thought, no zealous fœderalist, in his right mind, would have exposed his cause so much as to publish to the world that this great philosopher *did not* entirely approve the Constitution at the very moment when his "hand marked" his approbation of it; especially after the fœderalists themselves had so often and so loudly proclaimed, that he had *fully* and *decidedly* adopted it. The Doctor adds, "I am not sure I shall never approve it." This then is the only remaining hope of the fœderalists, so far as the Doctor's judgment is or may be of any service to their cause, that one time or another he *may* approve the new Constitution.

Again, says the Doctor, "In these sentiments I agree to this Constitution, with all its faults, if they are such; because I think a general government necessary for us, and there is no FORM of government but what may be a blessing to the people, if well administered." But are we to accept a form of government which we do not entirely approve of, merely in hopes that it *will* be administered well? Does not every man know, that nothing is more liable to be abused than power. Power, without a check, in *any* hands, is tyranny; and such powers, in the hands of even *good men*, so infatuating is the nature of it, will probably be wantonly, if not tyrannically exercised. The world has had experience enough of this, in every stage of it. Those among us who cannot entirely approve the *new* Constitution as it is called, are of opinion, in order that any form may be well administered, and thus be made a blessing to the people, that there ought to be at least, an express reservation of certain inherent unalienable rights, which it would be equally sac-

rilegious for the people to *give away*, as for the government to *invade*. If the rights of conscience, for instance, are not sacredly reserved to the people, what security will there be, in case the government should have in their heads a predilection for any *one* sect in religion? what will hinder the civil power from erecting a national system of religion, and committing the law to a set of lordly priests, reaching, as the great Dr. *Mayhew* expressed it, from the desk to the skies?[1] An *Hierarchy* which has ever been the grand engine in the hand of civil tyranny; and tyrants in return will afford them opportunity enough to vent their rage on *stubborn hereticks*, by *wholesome severities*, as they were called by national religionists, in a country which has long boasted its freedom. It was doubtless for the peace of *that* nation, that there should be an *uniformity* in religion, and for the same *wise* and *good* reason, the act of uniformity remains *in force* to these enlightened times.[2] . . .

1. In several of his writings and sermons, Jonathan Mayhew (1720–1766), a Boston Congregational minister, attacked the Anglican clergy as a danger to American liberties.

2. The Act of Uniformity (1662) declared that all clergymen had to make a declaration of "unfeigned assent and consent to all and every thing contained and prescribed" in the Book of Common Prayer of the Anglican Church.

Portland, Maine, Cumberland Gazette, 6 December 1787

Mr. WAIT,

"*To be, or not to be; that's the question.*"[1]
It is, or it may be.

Are the United States of America to be melted down into *nothing?* or are they to retain their dignity and importance? Are they to enjoy the privileges they now possess? or are they to have such as CONGRESS may *please* to give them? For it is manifest that so large an extent of territory as belongs to the United States cannot be governed in one district. It therefore must be divided. The division must be made by Congress; or it must arise from the States that *now* exist, or hereafter may exist. In the former case, the districts will have such privileges as Congress may, from time to time, see fit to give them; which privileges Congress may also curtail at pleasure:—in the latter case, the States will possess and enjoy the privileges they ought to have for the GOOD of the people at large. *Solus populi seprema est lex.* The GOOD of the people is, and ought to be, the *grand* object of attention in government.

GOOD and EVIL are now before us; and we may chuse which we please. If it is GOOD that the people should enjoy their liberties, we shall chuse that the States shall possess and enjoy such privileges as that the people will be secure of their rights and liberties. If it is not GOOD

that the people should enjoy their liberties, then we shall chuse that Congress shall divide their EMPIRE, and tell their different districts, or provinces, what they *shall* do from time to time. In this latter case, if the people are easy it is well—if the people are not easy, it is as well: for it will be a matter of indifferency to Congress whether they are easy, or not. My brethren have, therefore, to guard their rights: and Americans will never shamefully neglect them.

Notwithstanding the above, Mr. Printer, I think the Constitution proposed incomparably GOOD, provided it be properly guarded by a FEDERAL BILL OF RIGHTS: for it matters not what it *may* contain, provided the federal Bill of Rights be *explicit:*—nay, it would be a *benefit* if the proposed Constitution should be capable of being construed into a sense that *might* militate with the federal Bill of Rights, provided its most natural and most easy sense should accord with *such a bill:* for in such a case any *sinister* designs of Congress would be more easily detected; and States, or Conventions of the people, would the more easily counteract them.

Whether the federal House of Representatives shall have the *sole* power of impeachment, or whether other bodies may impeach, is yet to be determined. An Hutchinson, &c. have been impeached by the *once* province of the Massachusetts-Bay.

GUARD YOUR RIGHTS, AMERICANS!

1. William Shakespeare, *Hamlet*, Act III, scene 1, line 55.

Brutus

Virginia Journal, 6 December 1787 (excerpt)[1]

When a man publishes the sentiments of another without his knowledge or approbation, and with a view of opposing them in a public manner, it may, at the first blush, appear inconsistent with candor, fairness, or generosity; but upon a second consideration, I think every unprejudiced mind must be convinced of the justice and propriety of the measure, at least in this instance, where the subject is wholly of a public nature, and the sentiments those of a man whose influence is great, and whose DICTUM upon political subjects would be implicitly received, by many as the oracle of truth: For, if I had endeavoured to point out to the public the groundlessness and fallacy of some of Col. Mason's objections to the proposed constitution before those objections had been fully communicated to the public, there would have been good reason to suppose that I made an ungenerous use of the advantage which I had of seeing them in manuscript; to suppress those (if any such there were) which could not be answered, or at least, that

there might be a chain of connection between them which would be broken, and useless if a single link was missing. I therefore offered them for publication. Let them have what weight they will. I now feel myself fully at liberty to answer them in any manner I please consistent with decency and candor.

"There is no bill of rights." As the principles contained in a bill of rights have ever been considered as the foundation of civil liberty, this, at the head of a long string of objections to a government, certainly makes a very formidable appearance, and would of itself be sufficient to condemn the whole system, if it could not be clearly shewn that it was not only unnecessary, but would even have been absurd to have introduced it in the proposed constitution.

In the formation of a political constitution it is necessary that every right and privilege which the people reserve to themselves should be particularly and individually specified; or, that the portion of their natural liberty, which they give up for the enjoyment of civil government, should be expressly mentioned, in the constitution. In the former case, if in the enumeration of the rights and privileges of the people any should be omitted or forgotten, the people cannot assume them. They are lost.—In the latter, that part of natural liberty which is given up at the behest of society is fully and completely denied, and whatever is not there expressly granted remains to the people.—Upon this last mentioned principle the proposed constitution was formed; it would therefore have been not only absurd but even dangerous to have inserted a bill of rights; because, if, in the enumeration of rights and privileges to be reserved, any had been omitted or forgotten, and the people, at a future period, should assume those so omitted, the rulers might with propriety dispute their right to exercise them, as they were not specified in the bill of rights;—and, on the other hand, the people would deny the authority of the rulers to deprive them of the exercise of those rights because they were not expressly given up by them. Thus a bill of rights, in the proposed constitution, instead of securing to the people those rights and privileges which God and nature has rendered unalienable, might have been productive of disputes, contentions, and, perhaps, ultimately of ruin to them. This is the light in which the matter was viewed in the convention, and it was there fully discussed. The powers which the people delegate to their rulers are completely defined, and if they should assume more than is there warranted, they would soon find that there is a power in the United States of America paramount to their own, which would bring upon them the just resentment of an injured people.

"Nor are the people secured even in the enjoyment of the benefits of the common-law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitution of the several States."

There is something in this objection which I confess I do not understand, for it certainly cannot mean that the common-law is secured by the constitutions of the several States, as the constitution of Virginia (in forming of which Col. Mason bore a very considerable part) is wholly silent on the subject; and if it means that the common-law is adopted by the acts of the Legislature, it cannot be a part of the constitution, and may with equal propriety, be adopted by any other legislative body.[2] . . .

1. On 22 November the *Virginia Journal*, at the request of "Brutus" (Tobias Lear), printed George Mason's objections to the Constitution. The italics within the quoted material are not in the copy of Mason's objections sent to Washington (BoR, II, 28–31). For the entire piece, see RCS:Va., 212–16. For Tobias Lear's role in printing Mason's objections in Virginia, see CC:276. Lear lived at Mount Vernon and served as Washington's private secretary.

2. The fifth revolutionary convention that met from May to July 1776 passed an ordinance stating "That the common law of England, all statutes or acts of parliament made in aid of the common law prior to the fourth year of the reign of king James the first, and which are of a general nature, not local to that kingdom, together with the several acts of the general assembly of this colony now in force, so far as the same may consist with the several ordinances, declarations, and resolutions of the general convention, shall be the rule of decision, and shall be considered as in full force, until the same shall be altered by the legislative power of this colony" (Hening, IX, 127).

A True Friend
Richmond, Va., 6 December 1787 (excerpt)

"A True Friend," a one-page broadside dated 5 December, was probably available for sale and/or distribution on the 6th. The only known copy is in the Albert Gallatin Papers, NHi. On the verso is a letter of 7 December from Jean Savary de Valcoulon of Richmond to Bertier and Co., a Philadelphia mercantile firm, in which Savary, writing in French, revealed that the broadside was printed by Augustine Davis who had not yet published it in his *Virginia Independent Chronicle*. Savary requested that Bertier and Co. have "A True Friend" reprinted if it met with its approval. At the bottom of the broadside an unidentified person wrote: "[Je?] trouve ce discours excellent" (I find this treatise excellent).

Davis reprinted "A True Friend" from the same forms in his newspaper on 12 December. Ten days later this version appeared in the Philadelphia *Independent Gazetteer*. Lengthy excerpts, with minor changes, are in the Massachusetts *Salem Mercury* of 8 January 1788 and the Portland, Maine, *Cumberland Gazette* of 24 January. For the entire broadside, see CC:326; RCS:Va., 216–21n.

To the ADVOCATES *for the* NEW FEDERAL CONSTITUTION;
and to their ANTAGONISTS.

. . . Notwithstanding Mr. Wilson's assertion, that *every thing which is not given up by this fœderal constitution, is reserved to the body of the people*; that security *is not sufficient* to *calm the inquietude* of a *whole nation.* Let us then insert in the first page of this constitution, as a preamble to it, a declaration of our rights, or an enumeration of our prerogatives, as a sovereign people; that they may never hereafter be unknown, forgotten or contradicted by our representatives, our delegates, our servants in Congress: Let the recognition, and solemn ratification by Congress, of this declaration of rights, be made the *sine qua non* of the adoption of this new fœderal constitution, by each state. This precious, this comfortable page, will be the ensign, to which on any future contestation, time may induce between the governed and those intrusted with the powers of government, the asserters of liberty may rally, and constitutionally defend it.

The rights of the people should never be left subject to problematical discussion: They should be clear, precise and authenticated: They should never stand in need of the comments or explanations of lawyers or political writers, too apt, we know, to entangle the plainest rights in their net of sophistry: What man of upright intentions will dare to say, that free men giving up such extensive prerogatives to their rulers, as the new fœderal constitution requires, should not at the same time put them in mind of the rights, which constitute them such? If there be any person who says, that implication, that forced construction should satisfy their doubts, ye imps of hell whip me such fiend!

I now most earnestly pray, that both the fautors[1] and the opponents of the new fœderal constitution, may deign to accept this compromise. If either party refuse to subscribe to it, let them be judged by their country, and if I mistake not, they will be found guilty of the treacherous views, and dark designs with which they are so ready to asperse their antagonists.

December 5, 1787.[2]

1. An adherent, partisan, supporter, or abettor.
2. The *Chronicle* and *Gazetteer* reprints added "Richmond" to the dateline.

From Roger Sherman
New Haven, Conn., 8 December 1787 (excerpt)[1]

Dear Sir

I am informed that you wish to know my opinion with respect to the new Constitution lately formed by the federal convention, and the Objections made against it.

I suppose it is the general opinion that the present Government of the United States is not Sufficient to give them Credit and respectability Abroad or Security at home. But little faith or confidence can be placed in a goverment that has only power to enter into engagements, but no power to fulfil them.

To form a just opinion of the new constitution it Should be considered, whether the powers to be thereby vested in the federal government are Sufficient, and only Such as are necessary to Secure the Common interests of the States; and whether the exercise of those powers is placed in Safe hands.—In every government there is a trust, which may be abused; but the greatest Security against abuse is, that the interest of those in whom the powers of government are vested is the Same as that of the people they govern, and that they are dependent on the Suffrage of the people for their appointment to, and continuance in Office. this is a much greater Security than a declaration of rights, or restraining clauses upon paper.

The rights of the people under the new constitution will be Secured by a representation in proportion to their numbers in one branch of the legislature, and the rights of the particular State governments by their equal representation in the other branch. . . .

1. Dft, Sherman Collection, CtY. The letter has no addressee. For the entire piece, see CC:331.

A Landholder VI
Connecticut Courant, 10 December 1787 (excerpts)

"Landholder" VI was a response to George Mason's objections to the Constitution (BoR, II, 28–31) which the *Connecticut Courant* had reprinted on 26 November. "Landholder" VI was also published in the Hartford *American Mercury*, with minor variations, on 10 December, immediately following the *Mercury's* reprinting of Mason's objections. By 11 February 1788 "Landholder" VI was reprinted, in whole or in part, twenty-one times: N.H. (2), Mass. (5), R.I. (2), Conn. (3), N.Y. (4), Pa. (2), Md. (1), Va. (1), S.C. (1). For the entire essay, see CC:335. The *Massachusetts Centinel*, 19 December, and the *New Hampshire Spy*, 25 December, prefaced their reprints: "We have published Col. MASON's objections to the Federal Constitution—common justice, therefore, requires that we should also insert the following pertinent *critique* on them." The *Pennsylvania Journal*, 22 December, the *Pennsylvania Gazette*, 26 December, and the *New York Morning Post*, 3 January 1788, included this preface: "Mr. MASON's objections against the Constitution of the United States having been much relied on and quoted by the enemies of that Constitution, and no one having published any thing in answer to it, if nothing better offers, your inserting the following, taken from the Connecticut Courant, will oblige . . . NASH."

For the authorship, circulation, and impact of the "Landholder," see CC:230.

To the Landholders and Farmers.

He that is first in his own cause seemeth just; but his neighbour cometh and searcheth him.[1]

The publication of Col. Mason's reasons for not signing the new Constitution, has extorted some truths that would otherwise in all probability have remained unknown to us all. His reasons, like Mr. Gerrys, are most of them *ex post facto*—have been revised in New-Y—k by R. H. L. and by him brought into their present artful and insidious form. The factious spirit of R. H. L.—his implacable hatred to General Washington—his well known intrigues against him in the late war—his attempt to displace him and give the command of the American army to General Lee, is so recent in your minds it is not necessary to repeat them. He is supposed to be the author of most of the scurrility poured out in the New-York papers against the new constitution.[2] . . .

There is no Declaration of Rights. Bills of Rights were introduced in England when its kings claimed all power and jurisdiction, and were considered by them as grants *to the people.* They are insignificant since government is considered as originating from the people, and all the power government now has is a grant *from the people*: the constitution they establish with powers limitted and defined, becomes now to the legislator and magistrate, what originally a bill of rights was to the people. To have inserted in this constitution a bill of rights for the states, would suppose them to derive and hold their rights from the fœderal government, when the reverse is the case.

There is to be no ex post facto laws. This was moved by Mr. Gerry and supported by Mr. Mason, and is exceptionable only as being unnecessary; for it ought not to be presumed that government will be so tyrannical, and opposed to the sense of all modern civillians as to pass such laws, if they should they would be void.[3] . . .

There is no declaration of any kind to preserve the liberty of the press, &c. Nor is liberty of conscience, or of matrimony, or of burial of the dead; it is enough that congress have no power to prohibit either, and can have no temptation. This objection is answered in that the states have all the power originally, and congress have only what the states grant them. . . .

1. Proverbs 18:17.

2. There is no evidence that Richard Henry Lee had been involved in an attempt to replace Washington with Charles Lee. "Landholder's" charge was repeated by "New England," *Connecticut Courant*, 24 December (CC:372; RCS:Conn., 507–12).

3. On 14 September Mason moved that the Convention reconsider the Constitution's prohibition against ex post facto laws because it was "not sufficiently clear that the pro-

hibition'' was limited to criminal cases. He believed that ''no Legislature ever did or can altogether avoid them in Civil cases.'' Gerry seconded the motion because he wanted ''to extend the prohibition to 'Civil cases' '' (BoR, I, 115–18).

George Lee Turberville to James Madison
Richmond, Va., 11 December 1787 (excerpts)[1]

. . . The principal objection that the opponents bring forward against this Constitution, is the total want of a Bill of Rights—this they build upon as an essential—and altho' I am satisfied that an enumeration of those priviledges which we retained—wou'd have left floating in uncertainty a number of non enumerated contingent powers and priviledges—either in the powers granted or in those retained—thereby indisputably trenching upon the powers of the states—& of the Citizens—insomuch as those not specially retained might by just implication have been consider'd as surrender'd—still it wou'd very much assist me in my determination upon this subject if the sense of the Convention and their opinion upon it cou'd be open'd to me. . . .

If the Laws of the United states are to be superior to the Laws & Constitutions of the several states, why was not a Bill of Rights affixed to this Constitution by which the Liberties of individuals might have been secured against the abuse of Fœderal Power?

If Treaties are to be the Laws of the Land and to supercede all laws and Constitutions of the states—why is the Ratification of them left to the senate & President—and not to the house of Representatives also? . . .

1. RC, Madison Collection, NN. For the entire letter, see CC:338. Madison responded to Turberville's queries on 1 March 1788, but the letter is not extant.

Pennsylvania Convention Considers Amendments to Constitution
12 December 1787

For the amendments considered by the Pennsylvania Convention, see BoR, I, 241–43, II, 171–74.

James Madison to Archibald Stuart
New York, 14 December 1787 (excerpt)[1]

I was yesterday favored with yours of the 2d. inst:[2] and am particularly obliged by the accuracy and fulness of its communications. The mutability of the Legislature on great points has been too frequently exemplified within my own observation, for any fresh instance of it to

produce much surprize. The only surprize I feel at the last steps taken with regard to the new Constitution, is that it does not strike the well meaning adversaries themselves with the necessity of some anchor for the fluctuations which threaten shipwreck to our liberty. I am persuaded that the scheme of amendments is pursued by some of its patrons at least, with the most patriotic & virtuous intentions. But I am equally persuaded that it is pregnant with consequences, which they fail to bring into view. The vote of Virga. on that subject, will either dismember the Union, or reduce her to a dilemma as mortifying to her pride, as it will be injurious to her foresight. I verily believe that if the patrons of this scheme were to enter into an explicit & particular communication with each other, they wd find themselves as much at variance in detail as they are agreed in the general plan of amendments. Or if they could agree at all it would be only on a few points of very little substance, and which would not comprehend the objections of most weight in other States. It is impossible indeed to trace the progress and tendency of this fond experiment without perceiving difficulty and danger in every Stage of it. . . .

1. RC, Misc. Coll., Henry E. Huntington Library, San Marino, Calif. For the entire letter, see CC:346.

2. See Stuart to Madison, 2 December, BoR, II, 179–80.

Agrippa VI

Massachusetts Gazette, 14 December 1787 (excerpt)[1]

To the PEOPLE.

To prevent any mistakes, or misapprehensions of the argument, stated in my last paper,[2] to prove that the proposed constitution is an actual consolidation of the separate states into one extensive commonwealth, the reader is desired to observe, that in the course of the argument, the new plan is considered as an intire system. It is not dependent on any other book for an explanation, and contains no references to any other book. All the defences of it, therefore, so far as they are drawn from the state constitutions, or from maxims of the common law, are foreign to the purpose. It is only by comparing the different parts of it together, that the meaning of the whole is to be understood. For instance—

We find in it, that there is to be a legislative assembly, with authority to constitute courts for the trial of all kinds of civil causes, between citizens of different states. The right to appoint such courts necessarily involves in it the right of defining their powers, and determining the rules by which their judgment shall be regulated; and the grant of the

former of those rights is nugatory without the latter. It is vain to tell us, that a maxim of common law requires contracts to be determined by the law existing where the contract was made: for it is also a maxim, that the legislature has a right to alter the common law. Such a power forms an essential part of legislation. Here, then, a declaration of rights is of inestimable value. It contains those principles which the government never can invade without an open violation of the compact between them and the citizens. Such a declaration ought to have come to the new constitution in favour of the legislative rights of the several states, by which their sovereignty over their own citizens within the state should be secured. Without such an express declaration the states are annihilated in reality upon receiving this constitution—the forms will be preserved only during the pleasure of Congress. . . .

1. For the entire essay, see RCS:Mass., 426–28. For a comment on this essay, see *Massachusetts Centinel*, 15 December (RCS:Mass., 429).

2. See "Agrippa" V, *Massachusetts Gazette*, 11 December (RCS:Mass., 406–9n).

Belchertown, Mass.: Instructions to State Convention Delegates 17 December 1787

Preliminary Instructions, 17 December 1787[1]

Sr

As you are Chosen a Delagate for this town to Set in Convention to act on the federal Constitution Latly agreed on by the Convention of the United States when assembled at New York and Proposed to be Laid before a Convention of Each State[.][2] the Business of the Convention appears to us to be of as much Importance as any that was Ever transacted we there fore Expect you will give Strict attention to the business whilst you are Imployed in it and use your Influenc[e] that there may be a Constitution Establish'd which shall secure the Libertys of the People Establish Justice Insure Domestick tranquility and Promote the genaral welfare of the people

And as it is necesary you should be Instruc[t]ed by the Inhabitants of this Town whether to Except of the Constitution proposed or not it is the oppin[i]on of this town that the Constitution Proposed has great merit in many Respects, and by Proper amendments may be adapted to the Exigencies of Gouverment and the Preservation of Liberty

1stly we are of oppinion that the Provision of Representation and right of Election are not Secured to the people

2dly that matters of the greatest Importanc[e] may be transacted by the Presedent with the advice of two thirds of a quoram of the Senate which we think Leavs room for amendment

3dly that the System is without a Bill of rights to Secure the Priveledges of the People which article we think of the greatest Importance and a bill of rights we think ought to be Established before the Constitution takes Place

4thly that no Religious test is to be Required for the qualification to any office or Publick trust under the united States and as it has Ever been the Principale and Practice of the Papists to Persicute those of the Protestant Religion we think it of the highest Importance to guard against those Evils which have So greatly Effected our Fathers in ages past and that no man of the Papist Religion be Ever a President or Senator

There are many questions which arise in my mind with respect to the form of Goverment Proposed and Particularly whether the Constitution does not in Efect Destroy the very Idea of Sovereign Independant States which we have so much gloried in

whether it does not so alter our Glorious Constitution as in Efect to Dissolve it

and whether the amendments in the Constitution ought not to be made before the Ratification

it is much Easier to Set out right than to get right after we have gone wrong and as it has been ~~the Disposition~~ the fate of almost all Republican Goverments that have Ever Existed after a very Short time by the art and Intregues of those that bear Sway to be brought into forms of Goverment that are the most opp[r]esive we ought therefore to weigh the matter well and not to adopt a Constitution that may be made better in so many Respects & which Endangers the Libertys of the People

Final Instructions, 17 December 1787[3]

To Mr. Justus Dwight Sir

In Conformity to a Resolution of the General Court Passed the 25th of October Last we have deligated you to meet in State Convention on the Second Wednesday of January next for the Purpus of adopting or Rejecting the Reported Constitution for the United States of america—

the object of your Mission Sir is of the highest magnitude in human affairs too Important Complycated & Extensive to be hastily decided upon—much time and application is Nesessary in order thoroughly to investigate it: the Civil dignity and Prosparity of this State; of the United States; and, Perhaps, of humanity, are Suspended on the decision of this momentious Question: and while our minds are fealingly Impressed With the Necessity of haveing an Equal Energetic federal Goverment; We are apprehensive that our Rights and Privalages Will not

be Confirmed to us by adopting the Proposed Federal Constitution. 1st. there is no bill of Right[s]. for other Reasons See artical 1 Section 2–3–4 and 8[,] artical 2d Section 1 & 2[,] artical 3d Section 1 and [Article] 6.[4] With many other obvious Reasons; but We Wish you Sir Patiently to hear and Examine Every argument that Shall be offered for and against its adoption; it is the welfair of the Union as Well as of this State that you are to Consult and while you are tenatious of the Rights of the People, be not affraid to delegate the Federal government Such Powers as are Absolutely Necessary for the advancing and maintaining our national honour and happiness.

Sir we mean not to Give you Positive Instruction Relative to your Voteing for or against the Reported Constitution when assembled you will hear all that Can be Said on the Subject and be able to form a Judicious Opinion—and having the fullest Confidence in your Political Wisdom Integrity and Patriotism We Chearfully on our Part Submitt the all-important question to your decision, and We beseech the ~~almighty~~ alwise god to direct the Convention into Such Measures as ~~Shall~~ May be for the best, good of the People of the United Stats of America. N. B. To use your infulan [i.e., influence] to have the yeas and Nays Published that are for and against the Constitution ~~if rejected~~

by order of the Committee Ebenzer Warner Chearman

Voted the above Instruction be Excepted.

1. MS, Archives of the Belchertown Historical Association, Stone House Museum, Belchertown, Mass. This document, in the handwriting of Justus Dwight, was apparently a preliminary instruction considered by the committee. Dwight was elected to the Convention and voted not to ratify the Constitution.

2. Some confusion exists here. The Constitution was adopted by the Constitutional Convention that met in Philadelphia and was carried by that body's secretary to New York City, where Congress adopted a resolution transmitting it to the states.

3. MS, Archives of the Belchertown Historical Association, Stone House Museum, Belchertown, Mass. The bottom of this page is endorsed: "Justus Dwight of Belcherstown/ County of Hampshire 90 miles Travel/Twenty Eight days Attendanc." Belchertown used Northampton's instructions to its delegates as a base, but added specific criticisms of the Constitution (RCS:Mass., 995–98).

4. At this point the amanuensis inadvertently retained the interlineation "and there is No Bill of Right" instead of crossing it out when interlineating the clause "1st. there is no bill of Right[s]" at the beginning of this sentence.

The Dissent of the Minority of the Pennsylvania Convention 18 December 1787 (excerpts)

The "Dissent of the Minority of the Convention" was signed by twenty-one of the twenty-three members who had voted against ratification of the Constitution. The "Dissent" summarized the arguments against the Constitution set forth in the newspaper essays and pamphlets printed in Pennsylvania and else-

where since mid-September, and the arguments Robert Whitehill, John Smilie, and William Findley had used in the state Convention. It attacked the secrecy of the Constitutional Convention and its lack of authority to write a new constitution. It denounced both the force used to secure a quorum of the Pennsylvania Assembly to make the calling of a state convention possible and the procedures of the state Convention and the behavior of the majority of its members.

However, the "Dissent" was more than a political attack upon political opponents. The document provided a detailed analysis of the Constitution from the point of view of men who believed in the sovereignty of the states, and who believed that the new government would destroy state sovereignty and deprive individual citizens of their rights and liberties.

Most importantly of all, the "Dissent," as the "official" statement of the minority of the Convention, presented the amendments to the Constitution that Robert Whitehill had submitted to the Convention on 12 December. The majority of the Convention had refused to consider the amendments or to allow them to be placed on the Convention Journals. Although not an official document in a strict sense, the "Dissent" gave formal sanction to the growing demand for amendments in Pennsylvania, and it provided an example for men in other states as their conventions met to consider the Constitution.

In 1807, in applying for office under the administration of Thomas Jefferson, Samuel Bryan, the author of "Centinel," declared that he had written the "Dissent of the Minority." If so, he must have had the help of minority members of the Convention.

The "Dissent" was published on 18 December in the *Pennsylvania Packet* and as a broadside by Eleazer Oswald. By 14 March 1788 it had been reprinted in thirteen newspapers and one magazine. For more on the authorship, circulation, responses to and the full text of the "Dissent," see CC:353.

The excerpts from the "Dissent" printed here are taken from the *Pennsylvania Packet* and follow the *Packet* and the broadside version in omitting the use of capital letters. It may or may not be significant that the two first printings do not capitalize such words as "Convention," "Constitution," "President," "Senator" and the like, but capitalize "Congress" consistently.

. . . 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*. Tis 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 any of the articles, nor even on the final question 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.

[For the proposed amendments omitted here, see BoR, I, 241–43.]

After reading these propositions, we declared our willingness to agree to the plan, provided it was so amended as to meet those propositions, or something similar to them; and finally moved the convention to 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. . . .

3. We dissent, thirdly, because if it were practicable to govern so extensive a territory as these United States includes, 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 emission of a BILL OF RIGHTS ascertaining and fundamentally establishing those unalienable 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 control. 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 stipulation heretofore made in favor of them in the state constitutions are entirely superseded by this constitution. . . .

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 reexamined, 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: 1st. That the trial by jury, which is the grand characteristic of the common law, is secured by the constitution, only in criminal cases. 2d. That the appeal from both *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. 3d. 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 conusance [cognizance] 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 unbiased jury, so dear to every friend of liberty, the monstrous expense and inconveniences 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 fortune can endure the expense 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,[1] 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 of spirit could in the court of king's bench or common pleas at Westminster have given continuance to such a cause for a tenth-part of the time, nor have cost a twentieth-part of the expense. Yet the costs in the courts of king's bench and common pleas in England 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 senate; and *trial by jury* and the liberty of the people went out together.[2] At the same time we regret the intolerable delay, the enormous expenses 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 libeler, 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 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 neighborhood or country. Thus an inhabitant of Pittsburgh, on a charge of 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. . . .

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 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 into 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 of 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. These compose a respectable proportion of the community in the state. This is the more remarkable, because even when the distresses of the late war, and the evident disaffection of many citizens of that description, inflamed our passions, and when every person, who was obliged to risk 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 stipulations in favor of the rights of conscience;[3] but now when no necessity exists, those dearest rights of men are left insecure. . . .

1. Blackstone, *Commentaries*, Book III, chapter 24, p. 392.

2. Blackstone, *Commentaries*, Book III, chapter 23, pp. 380–81. This argument was used by William Findley in the Pennsylvania Convention on 8 December 1787 and disputed by James Wilson and Thomas McKean. On 11 December Wilson acknowledged that Findley was correct (RCS:Pa., 527–28, 532, 550–51).

3. Article II of the Pennsylvania Declaration of Rights guaranteed religious freedom, while Article VIII stipulated: "Nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent . . ." (BoR, I, 95). "A Citizen of Philadelphia" charged that the dissenters were not sincere when they talked and wrote

of "*liberty* and of the sacred rights of *conscience*." Six of the dissenters had once approved a report of a committe of the state Assembly that attacked conscientious objectors (*Pennsylvania Gazette*, 23 January 1788, RCS:Pa., 658).

A Countryman
Baltimore Maryland Gazette, 18 December 1787 (excerpt)[1]

To the COUNTRY PEOPLE OF MARYLAND.

. . . Can you say you have no bill of rights when the new Constitution guarantees to each State a republican form of government, that is to say, warrants and defends the Constitutions of the different States. As little can any one say, that by the new form of government our State Constitutions would be abolished; for the new Constitution entirely depends on the Constitutions of our States for its existence; for were these dissolved, there could be no Congress. I would here remark that the new continental form of government seems to me to be entirely analogous to the forms of our State Constitutions as near as it could be brought; and what should be more eligible to an American than a federal government, just similar to the governments we have hitherto enjoyed? And is it not as near the British form of government as can be, which form, though I am no tory, I would have still chosen could we have been equally represented in their councils; I must except the perpetual kingly succession, which too often has been the foundation of arbitrary power and usurpation, which the short continuance of power in our head officer excludes. Shall any among you, my dear countrymen and fellow Americans, object against what we do not fully understand? Politics are the deepest of all studies; it requires an age of the brightest genius, assisted by the highest learning, to be master of the subject; such were the men we employed in the late Convention. If a farmer who had never studied divinity, should undertake to preach, or should he take it into his head to plead law as an attorney at the bar, without any knowledge of law, what a strange figure would he make—Can you or I then be critics and judges of such a profound work as our national government? Shall we have the arrogance to arraign it at the tribunal of our scanty knowledge, and condemn it as wrong? For my part, I will endeavour to choose good, honest, discerning men to places of office and trust; and if I fully believe them in some things to be in the wrong, I will petition for a redress of grievances, but shall confide in our rulers; I will endeavour to strengthen their hands, for I have often found them right when my opinion was wrong. I remember when our Commander in Chief fled before the British in the Jersies, at the head of fifteen hundred worn out troops, I ignorantly wished to hear of him standing to fight Howe, at the head of twenty

thousand veterans; and when his Excellency allowed the English to take possession of Philadelphia, I thought he was all in the wrong, when he was perfectly right—For this reason people should not judge and determine in things above them, or of which, from situation or calling, they know but little.

With real regard for America, believe me to be, as I really am, *A* COUNTRYMAN.

December 12, 1787.

1. On 14 December the editor of the Baltimore *Maryland Gazette* informed his readers that "The Piece signed a COUNTRYMAN, will be in our next." For the entire essay, see RCS:Md., 115–16.

Anti-Cincinnatus
Northampton, Mass., Hampshire Gazette, 19 December 1787

"Anti-Cincinnatus" criticizes "Cincinnatus" I (BoR, II, 78–82) for attacking James Wilson's speech of 6 October (BoR, II, 25–28). The *Hampshire Gazette* had reprinted Wilson's speech on 14 November and "Cincinnatus" I on 5 December. "Anti-Cincinnatus" was reprinted in the *New York Journal* on 29 December.

Mr. Printer, An antifederal piece, in No. 66, purporting to be an answer to Mr. Wilson, under the signature of Cincinnatus, "appears to me to abound" with misrepresentation, misconstruction "and sophistry, and so dangerous" to the uninformed and less discerning readers, as for their sakes and theirs only, "to require" reprehension and "refutation." "If we" reject "the new Constitution, let us understand it: whether it deserves to be" rejected "or not, we can determine only by a full" and honest "examination of it; so as truly and clearly to discern what it is we are so" warmly, and I may boldly "say, indescently called upon to" reject, and for what important reasons: such "examination," so far as the objections and reasonings of said piece have the appearance of weight or force, is the "object" of the following paragraphs.

The introduction is filled with little else but sarcastical taunts liberally bestowed both upon the Constitution, and Mr. Wilson, one of its framers and advocates, which I shall pass without further notice, only requesting the reader to take the trouble in the issue to judge, whether, "the hope" of Cincinnatus "to avoid the censure of having industriously endeavoured to prevent and destroy" the Constitution "by insiduous and clandestine attempts," is not founded on slippery ground.

His only objection to the Constitution (after, we may presume, a narrow and critical search for facts) is, "the omission of a declaration of rights;" which omission Mr. Wilson, and with him every man of

common sense and candor, justifies, for this reason, viz. in the State Constitutions a bill of rights is necessary, because whatever is not reserved is given, but in this Congressional Constitution whatever is not given is reserved. This, says our author, "is a distinction without a difference, and has more the quaintness of a conundrum than the dignity of an argument;" and exerts himself briskly in the "play of words and quaintness of conundrums" to set aside the distinction: to all which it is sufficient to reply, that it must be obvious to the discerning and candid reader, that the new Constitution, although it contains not a declaration of the rights of the people; yet it contains a declaration of the powers given to rulers; intentionally with precision defines and limits them; thus firmly and stably fixeth the boundaries of their authority, beyond which they cannot pass, unless in violation of the Constitution: To have made a formal declaration, that all the rights and powers not mentioned nor defined are reserved and not granted, would have been as great an afront to common sense, as if after having made a grant of a certain tract of land or other articles of property particularly specified and described in a deed or bill of sale, I should add a particular enumeration of my every other piece of land and article of property, with a declaration in form, that none of these are meant to be granted; for not being granted they are certainly reserved, as certainly without as with a declaration of it.—Common sense requires not a declaration that articles either of property or power not mentioned in the bill are not granted by the bill.

To illucidate the danger arising from this omission of a bill of rights, and prove "*that a dangerous aristocracy springing from it* (the Constitution) *must necessarily swallow up the democratic rights of the union, and sacrifice the liberties of the people to the power and dominion of a few*," he refers to the liberty of the press, as an instance taken by Mr. Wilson, to shew that a bill of rights is not necessary, because this remains safe and secure without it; for this reason, viz. "there is no express power granted to regulate literary publications.["] The Constitution grants no power more nor less with respect to the liberty of the press; but leaves it just as it found it, in the hands of the several state constitutions: but to enervate this argument, my author sagely observes, "that where general powers are expressly granted, the particular ones comprehended within them must also be granted:"—and with keen sagacity discovers a general power granted to Congress "to define and punish offences against the law of nations," and after a plausible parade or inconclusive argumentation, assumes to have proved, "that the power of restraining the press is necessarily involved in the unlimited power of defining offences against the law of nations, or of making treaties,

which are to be the supreme law of the land.'' To clear off the obscurity and confusion which involve the ideas and reasonings of this author, concerning the law of nations and public treaties, and set this matter in a clear convictive point of view, it is needless and would be to no purpose to pursue him through an intricate maze or winding in a pompous declamatory harangue; it is needful, to that end only to consider, that by the law of nations, is intended, those regulations and articles of agreement by which different nations, in their treaties, one with another, mutually bind themselves to regulate their conduct, one towards the other. A violation of such articles is properly defined an offence against the law of nations: and there is and can be no other law of nations, which binds them with respect to their treatment one of another, but these articles of agreement contained in their public treaties and alliances.

These public treaties become the law of the land in that being made by constitutional authority, i.e. among us, by those whom the people themselves have authorized for that purpose, are in a proper sense their own agreements, and therefore as laws, bind the several states, as states, and their inhabitants, as individuals to take notice of and govern themselves according to the articles and rules which are defined and stipulated in them: as law of the land they bind to nothing but a performance of the engagements which they contain. How then doth it appear ''that a power to define offences against the law of nations, necessarily involves a power of restraining the liberty of the press?''

Have we the least possible ground of fear, that the United States in some future period will enter in their public treaties an article to injure the liberty of the press? What concern have foreign nations with the liberty or restraint of the American press?

This writer seems to have been set to work with design (not his own) to yield his assistance to verify an observation, said to be made by Dr. Franklin, viz. ''That the goodness and excellency of the federal Constitution is evidenced more strongly by nothing, than the weakness and futility of the objections made against it.''

That our author had a design in the choice of a signature, to fasten a stigma on the worthy patriotic society,[1] I can not assert. Be assured this is by no means the wish of ANTI-CINCINNATUS.

1. The Society of the Cincinnati.

North Carolina Gazette, 19 December 1787 (excerpt)[1]

AN ESSAY *on the* Constitution *proposed to the* People of the U.S.
BY THE FEDERAL CONVENTION.

. . . SOME persons have exclaimed that the omission of a clause respecting the liberty of the press in the fœderal constitution intimates that we are not to enjoy any longer that precious blessing—that Congress could constitutionally issue an ordinance forbidding the printers to publish their opinion on the conduct of that august body, or any of their officers. Whether such a consequence may be properly drawn will be left for the consideration of the reader—At all events it is to be when that as it has been thought proper to mention in the fœderal constitution, that the trial by jury and the writ of *Habeas Corpus* would always be preserved, a few words might have been added, to promote to the people of the United States, that under the new government, the liberty they now enjoy of publishing their ideas, would be held as sacred. As the Aristocratical, of all governments, is the most averse to the liberty of the press—"There," says an elegant French writer "the magistrates are petty sovereigns, but no[t] great enough to despise affronts. If in a monarchy a satirical stroke is designed against the prince, he is placed in such an eminence that it does not reach him; but an aristocratical lord is pierced to the very heart."[2] Policy aimed to require that in proposing the adoption of an aristocratical government, assurances should be given us, that it should have no bad influence on our most sacred right. It was a compliment the American printers had a right to expect.—However conscious they may be of their being allowed to dabble [in] politics, they are fond of hearing the freedom of the press proclaimed, like the fair of being told of their beauty; and if they are to believe that, whenever a lady ceases to be told that she is a fine woman, the time is pretty near when she will no more be looked upon such, they may take the omission of a clause declaring that the press shall ever be free for a bad omen. *(To be continued.)*

1. This essay was begun in the issue of 12 December and carried over to the issues of 19 and 26 December. Only the 19 December issue is extant. For the entire portion of the essay printed on 19 December, see RCS:N.C., 29–32n.

2. Montesquieu, *Spirit of Laws*, I, Book XII, chapter XIII, 286.

Thomas Jefferson to James Madison
Paris, 20 December 1787 (excerpt)[1]

. . . I will now add what I do not like. first the omission of a bill of rights providing clearly & without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal & unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land & not by the law of Nations. to say, as mr Wilson

does that a bill of rights was not necessary because all is reserved in the case of the general government which is not given, while in the particular ones all is given which is not reserved, might do for the Audience to whom it was addressed,[2] but is surely a gratis dictum, opposed by strong inferences from the body of the instrument, as well as from the omission of the clause of our present confederation which had declared that in express terms.[3] it was a hard conclusion to say because there has been no uniformity among the states as to the cases triable by jury, because some have been so incautious as to abandon this mode of trial, therefore the more prudent states shall be reduced to the same level of calamity. it would have been much more just & wise to have concluded the other way that as most of the states had judiciously preserved this palladium, those who had wandered should be brought back to it, and to have established general right instead of general wrong. let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse, or rest on inference. . . .

1. RC, Madison Papers, DLC. For a longer excerpt from this letter, see CC:Vol. 2, pp. 482–85. Printed: Rutland, *Madison*, X, 335–39. For a long extract from this letter, with significant alterations, see Jefferson to Uriah Forrest, 31 December (BoR, II, 225–26n).

2. See James Wilson's speech of 6 October 1787, BoR, II, 25–28.

3. Article II of the Articles of Confederation provided 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" (CDR, 86).

Rufus King to Jeremiah Wadsworth
New York, 23 December 1787 (excerpt)[1]

. . . The Nabobs of Virginia begin to be alarmed; although Colo. Mason declared at the first Meeting of their Assembly, which is still in Session, that he was in favor of a reference of the Constitution to a Convention, and against any Act of the Legislature, which would in any manner indicate the Opinion of the Members on the Constitution, yet he is now united with Patrick Henry in an attempt to prejudice the system, by suggesting to the proposed Convention a mode of Effecting Amendments—I understand that the Speaker of their Senate & the Speaker of the Representatives are to be authorised to open a Correspondence with the several *States* on the Subject of the Constitution; to propose *to them* that their Conventions shd. Suggest amendments, and that a second Convention shd. be assembled at Philadelphia for the

purpose of reconsidering the System[,] examining the proposed amendments, and reporting a revised Plan to be submitted for ratification to State Conventions—This was the Plan of Governor Randolph in the federal Convention, but the idea met with an almost unanimous Disapp[r]obation in that Assembly;[2] and to me I confess it appears to proceed in the present Instance from no good motive—Henry is decidedly against a confederacy between the *thirteen* States; he fears the accomplishment of that measure, and will make great Exertions to prevent it—I hope in vain. . . .

1. RC, Wadsworth Papers, Wadsworth Atheneum, Hartford, Conn. For the entire letter, see CC:368. King probably obtained much of the information in this letter from James Madison, who was in New York City as a delegate to Congress. (See BoR, II, 175–76, 179–80.)

2. For Randolph's proposal in the Constitutional Convention, see BoR, I, 150–52.

One of the People: Antifederal Arguments
Maryland Journal, 25 December 1787 (excerpt)

For some time Federalists and Antifederalists had accused one another of deliberately misleading the public. This item is a Federalist rebuttal to a number of alleged Antifederalist misrepresentations. It was reprinted in the January 1788 issue of the nationally circulated Philadelphia *American Museum* and in eight newspapers by 10 March: N.H. (1), Mass. (1), Conn. (2), N.Y. (1), N.J. (1), Pa. (1), S.C. (1). The reprint in the *Massachusetts Gazette*, 15 January 1788, was unique. The *Gazette* inserted a bracketed comment after each Federalist answer. These comments have been placed in angle brackets.

For the full item, see RCS:Md., 120–23n; CC:377.

. . . [ARGUEMENT] VI.

It is also said by Mr. *Richard Henry Lee*, that the people of this country have thought a bill of rights necessary to regulate the exercise of the great power given to their rulers, as appears by the various bills or declaration of rights, whereon the government of the *greater number of the states* are founded.

ANSWER.

Only *four states*[1] appear, by the book of constitutions,[2] to have a bill of rights, which are the *lesser number of states*. ⟨What think ye of (*Sir*) RICHARD, now?⟩

These, Mr. *Goddard*, are the arguments used to prejudice the minds of the people against the constitution, some of which, it seems, "*several Gentlemen*" *requested you to publish*. For this time, we will suppose these gentlemen to have been ignorant of the deceptions they have thus

publicly countenanced, because no *gentleman* would knowingly propagate or countenance *untruths*.

December 22, 1787.

1. On 28 December an errata in the *Maryland Journal* stated that five states, not four, had bills of rights. Only one other newspaper and the Philadelphia *American Museum* printed this correction.

Seven states actually had "declarations of rights"—Virginia, Delaware, Pennsylvania, Maryland, North Carolina, Massachusetts, and New Hampshire—that were attached to their state constitutions adopted between 1776 and 1783. Two other states had equivalents of bills of rights. In 1650, an additional provision was added to the Fundamental Orders of Connecticut (1638) affirming certain "libberties, immunities, [and] priviledges." In 1786 Connecticut adopted "An Act containing an Abstract and Declaration of the Rights and Privileges of the People of this State, and securing the same" (BoR, I, 63–64). See also a Connecticut 1786 "Act containing an Abstract and Declaration of the Rights and Privileges of the People of this State, and securing the same" (BoR, I, 63–64). The New York constitution of 1777 did not have a bill of rights, but a number of rights were embedded in various provisions of the constitution (BoR, I, 88–89). On 26 January 1787 New York adopted a statutory bill of rights (BoR, I, 89–90).

2. A reference to *The Constitutions of the Several Independent States of America* . . . (Philadelphia, 1781) (Evans 17390), or the new, complete, and corrected edition printed in New York in 1786 (Evans 20064).

Philadelphiensis VI

Philadelphia Freeman's Journal, 26 December 1787 (excerpt)[1]

. . . Many patriotic writers wishing to compromise matters between the friends and enemies of the proposed government, have imagined that the difference might be amicably settled, if a declaration of rights were prefixed to the constitution, so as to become a part of it; and therefore have recommended this to the parties as a necessary measure to reconcile them again to each other: But these good men did not consider that a declaration of rights would effectually and completely annihilate the constitution; of this however, its advocates were well aware, and consequently could not consent to the amendment. No, no, the haughty lordlings and their sycophants must have no *limits* set to their power; they alone should rule; yes, and rule as they *list* too: why should any poor poltroon speak of rights; what are his rights? Why, to work as a slave for his *well born master*. Ah, my fellow-citizens, this is a trying moment! an awful time indeed! Is it possible that the freemen of America should lose their liberties so soon? I hope not; and I trust, that the Lord, who is the friend of the poor and oppressed, will defeat the purposes, and confound the counsels of their haughty enemies; so that "They shall take them captives, whose captives they were, and they shall rule over their oppressors."[2] *Amen*.

1. Reprinted: Philadelphia *Independent Gazetteer*, 27 December; *New York Journal*, 1 January 1788; *New York Morning Post*, 7 January. The last three paragraphs were reprinted, at the request of customers, in the Rhode Island *Providence Gazette*, 1 March, and in the Boston *American Herald*, 13 March. For the entire essay, see CC:382. For the authorship and impact of "Philadelphiensis," see CC:237.

2. Isaiah 14:2.

Edmund Randolph: Reasons for Not Signing the Constitution 27 December 1787 (excerpt)[1]

On 29 May 1787 Edmund Randolph presented the Virginia Resolutions calling for a strong central government to the Constitutional Convention. Although Randolph supported such a government throughout the Convention, he became concerned when the draft Constitution of the Committee of Detail (6 August) did not adequately protect the interests of Virginia or provide sufficient safeguards for the rights and liberties of the people. On 31 August Randolph suggested that the state ratifying conventions be allowed to recommend amendments to a second constitutional convention. On 10 September he presented detailed objections, and he moved for amendments and a second convention. His motion was postponed. On 15 September—three days after the Committee of Style reported the final draft Constitution—Randolph reintroduced his motion and said that, if it was not adopted, he would not sign the Constitution. The motion was defeated unanimously, and on the 17th he refused to sign. His refusal, however, did not mean that he would oppose the Constitution outside the Convention. Randolph wanted "to keep himself free to be governed by his duty as it should be prescribed by his future judgment." On the same day he wrote Richard Henry Lee that if the Constitution were not amended, it would end in a monarchy or an aristocracy (CDR, 243–45; Farrand, II, 479, 560–61, 563–64, 564, 631–33, 634, 644–45; CC:75; and Lee to Randolph, 16 October, BoR, II, 9).

Randolph sent a copy of the Constitution to Lieutenant Governor Beverley Randolph on 18 September, stating that the failure of George Mason and himself to sign the Constitution would "be better explained at large, and on a personal interview, than by letter" (RCS:Va., 11). In letters to Mason and James Madison, Randolph recommended the steps that Virginia should take concerning the ratification of the Constitution. The question of amendments was at the center of his plan (to Madison, 30 September, RCS:Va., 25).

When the legislature convened on 15 October, Governor Randolph sent it a copy of the Constitution without comment. Randolph was reelected governor on 23 October. Two days later the House adopted resolutions calling a state convention and on the 31st the Senate concurred. Randolph wrote Madison that he had not explained his failure to sign the Constitution to the legislature because he wanted to wait "until Every thing is determined, which may relate to the Constitution. I have prepared a letter, and shall send you a copy in a few days" (c. 29 October, RCS:Va., 132–35n).

Randolph's silence prompted much speculation. Some observers heard that Randolph wished he had signed the Constitution, while others were convinced

that he still opposed it. Most thought that, if he was indeed opposed, ratification would be more difficult. By early December Randolph had apparently become less critical of the Constitution because on 2 December four House delegates—Meriwether Smith, Charles M. Thruston, John H. Briggs, and Mann Page, Jr.—wrote him that they had heard his reasons for opposing the Constitution no longer existed. They asked him for permission to publish his objections (RCS:Va., 194–95). On 10 December Randolph granted them such permission (RCS:Va., 229). Seventeen days later Randolph sent Madison and Washington (RCS:Va., 275–76) each a sixteen-page pamphlet consisting of (1) an undated, prefatory statement by the four House delegates who had requested his permission to publish his objections; (2) their request of 2 December; (3) Randolph's reply of 10 December; and (4) Randolph's objections contained in a letter dated 10 October addressed to the Speaker of the House of Delegates (Evans 20669).

No copy of the title page of the pamphlet has been found and the identity of the printer is unknown. John Dixon of the Richmond *Virginia Gazette and Independent Chronicle* and Augustine Davis of the *Virginia Independent Chronicle* are good candidates. Dixon is the more likely choice because the formatting of Randolph's pamphlet bears some resemblance to a pamphlet that Dixon had recently published. (See "Richmond Pamphlet Anthologies," c. 15 December, RCS:Va., 241–43.) Davis reprinted most of Randolph's pamphlet in his newspaper on 2 January. The lines of the newspaper text are set differently from those of the pamphlet and the prefatory statement by the four House delegates is not included. Had he printed the pamphlet, Davis, like most printers, would probably have used the same plates to save time and expense. The pamphlet was reprinted in two other Virginia newspapers—the Richmond *Virginia Gazette and Weekly Advertiser* and the Petersburg *Virginia Gazette*, appearing in both in two installments on 3 and 10 January. These newspapers are the only ones known to have reprinted the entire pamphlet. The Petersburg newspaper reprinted it under the heading "National Government."

Both the pamphlet and newspaper versions of Randolph's letter to the Speaker circulated throughout Virginia. Outside Virginia, Randolph's letter was reprinted in the January issue of the Philadelphia *American Museum* and in sixteen newspapers by 31 March: Mass. (3), R.I. (2), Conn. (2), N.Y. (5), Pa. (3), Md. (1). The *Museum* and five of these newspapers also republished the 2 and 10 December letters. On 10 January the *Pennsylvania Mercury* printed a summary of Randolph's letter to the Speaker, and on the 12th this summary appeared in the *Pennsylvania Journal*. Lastly, Randolph's letter was reprinted in a New York Antifederalist pamphlet anthology that was published in April (Evans 21344).

Virginia Federalists praised Randolph's letter to the Speaker primarily because they believed it would promote the ratification of the Constitution. Some were especially pleased that Randolph had emphasized the necessity of Union and a strong central government. On the other hand, Antifederalists accused Randolph of trying to be all things to all men. Moreover, he had not made his objections to the legislature back in October because of a fear that he might not be reelected governor. (For Randolph's reaction to this swirl of public

opinion, see his letter of 29 February to James Madison, RCS:Va., 436–37, and for the impact of Randolph's letter to the Speaker outside of Virginia and the text of the entire pamphlet, see CC:385.)

. . . 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 Fœderal Convention. A quorum of eleven states, and the only member from a twelfth have subscribed it;[1] Mr. MASON of Virginia, Mr. GERRY of Massachusetts and myself having refused to subscribe.

Why I refused, would, I hope, be solved 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;[2] one of whom is, to the honor of the country, which he has saved, imbosomed in their affections, and can receive no praise from the highest lustre of language; the other two of whom have been long inrolled 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 my 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 temperateness in politicks into an enmity to the union. Nay I plainly foresaw, that in the dissensions of parties, a middle line would probably be interpreted into a want of enterprize and decision. But these considerations, how seducing soever, 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.[3] 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[4] were the following.

1. It is said in the resolutions, which accompany the constitution,[5] 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 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, and 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 chearfully 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, 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 of 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 task, 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 Conven-

tion should choose 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. . . .

1. Rhode Island was not represented in the Convention and only Alexander Hamilton signed for New York.

2. A reference to the three Virginia delegates who signed the Constitution—George Washington, James Madison, and John Blair.

3. For the amendments proposed to the Articles, see CDR, 96–135.

4. For the reasons Randolph gave at the time the Constitution was signed, see CC:75.

5. For the resolutions, see CC:76.

Remarker

Boston Independent Chronicle, 27 December 1787 (excerpts)[1]

To the Citizens of Massachusetts.

FRIENDS and FELLOW-COUNTRYMEN!

When any nation is about to make a change in its political character, it highly behoves it to summon the experience of ages that have past, to collect the wisdom of the present day, and ascertain clearly those just principles of equal government, that are adapted to secure inviolably the lives, the liberties and the properties of the people. In such a situation are the United States at the present day. They are now called to pronounce the *alpha* or the *omega* of their political existence, to lay a deep foundation for their national character, and to leave a legacy of happiness, or misery to their children's children. The Constitution recommended to the United States, is a subject of very general discussion, and while it involves in its fate, the interest of so extensive a country, every sentiment which can be offered upon it, deserves its proportion of the public attention. . . .

It is true indeed that in most cases, the scrutiny of the public eye, viewing any production in an infinite variety of lights, would more readily discover its defects; but when we consider that this Constitution is intended to unite the jarring interests of thirteen States, variously differing in their customs and privileges, for the purpose of one efficient national government, we are anxious to delegate the extremity of our

wisdom, to decide upon its merits: Laying it down then as a principle detached from the other excellencies of this government, that union is the principle object, and that therefore no objection from one State dictated by local partiality or interest, can lie against it; let us look a little into those objections, with which the public has been favoured. We shall first premise that there are certain classes and ranks of persons in every State, who are no doubt determined to oppose this Constitution, not because they think it a bad one, but because they know it to be one at all. These are demagogues in particular towns, whose popularity will probably be done away—persons holding certain places of emolument or honor, which may be discontinued, and those who became noticed by the public, barely by their excentric opposition to the wisest measures: Objections therefore from these sources, that are not founded in judgement and truth, are not much to be regarded. I believe however, that the futility of all objections can be easily exposed.

The first, and perhaps the most common, is that this Constitution does not contain a bill of rights. This is an objection which might be acknowledged to exist in full force upon the supposition that we have heretofore been slaves. It is a very common opinion, that this constitution hath for its object, the security of the rights and privileges of the people. I beg however to remark, that to secure the liberties of the people, was not the intended, or at least the immediate labour of Convention. Here was not the defect, neither our liberties were endangered, nor our privileges lessened: The people *have, do*, and I hope *will* ever possess them in perfection. National *defence, peace* and *credit*, were the grand points to be attended to, in this Constitution; and to these, the tenor of it inclines. The doctrine, that all which is not given, is reserved, is, notwithstanding all that hath been said of it, perfectly true. Men in full possession and enjoyment of all their natural rights, cannot lose them but in two ways, either from their own consent, or from tyranny. This Constitution, neither implies the former, nor creates an avenue to the latter. Therefore no cause can operate to this effect,—because the *people*, are always both able and ready, to resist the encroachments of Supreme Power.—Viewing the States as individuals, entering into social compact, for their mutual support and protection, some rights must doubtless be given up to the Governours of society. All that are delegated to Supreme Power, by this Constitution, are expressly declared. This amounts to a perfect limitation.—First, the whole are possessed,—some are given up, and the remaining are held valid and secure. *Hitherto* shalt thou go, and *no farther*.[2] A clear delegation of power, implies in itself a limitation. We do not decree to Governours, the power of saying what rights the people shall possess; but on the

contrary, the people grant them their power, and define and limit it by the very declaration. The people therefore, are in no danger of losing the rights which they now possess, because they have granted no power that can possibly reach to the deprivation of them. The enumeration of the rights of the people, besides being tedious, would be unnecessary and absurd. The omission therefore, of *a Bill of Rights*, was wisdom itself, because it implies clearly that the people who are at once the *source* and *object* of power, are already in full possession of all the rights and privileges of freemen. Let the people retain them forever. . . .

1. On 20 December the *Chronicle* noted that "Remarker" was omitted this week for want of room. For the entire essay, see RCS:Mass., 527–30. The continuation of this article was printed in the *Chronicle* on 17 January 1788.

2. Job 38:11. Speaking to Job, God said: "Hitherto shalt thou come, but no further: and here shall thy proud waves be stayed?"

The New Roof
Pennsylvania Packet, 29 December 1787 (excerpts)

This allegory was written by Francis Hopkinson, whose authorship was immediately apparent. On 2 January 1788 the Philadelphia *Freeman's Journal* printed "Hum-Strum" (RCS:Pa. Supplement, 760–61) who addressed the author of "The New Roof" as "Franciani Tweedle-dum-tweedle" and as a judge of the state admiralty court—a position then held by Hopkinson. "The New Roof" responded to "Hum-Strum" in such a way as to divulge his identity (*Pennsylvania Herald*, 12 January, RCS:Pa. Supplement, 786–87). Subsequent newspaper items referred to the author of the "The New Roof" as "Franky" and "a staring, little, crank, crabbit fellow, famous for making ballads and riddles" ("Extract of a letter from the Eastern Shore of Maryland," Philadelphia *Independent Gazetteer*, 8 February, CC:515; and "James De Caledonia," *Independent Gazetteer*, 4 March, RCS:Pa. Supplement, 973). Hopkinson acknowledged authorship privately in letters to Robert Morris and Thomas Jefferson and publicly in the August 1788 issue of the Philadelphia *American Museum* that reprinted "The New Roof" (see Morris to Hopkinson, 21 January 1788, Redwood Collection, Maryland Historical Society; Hopkinson to Jefferson, 6 April, CC:665). In 1792 "The New Roof" appeared among *The Miscellaneous Essays and Occasional Writings of Francis Hopkinson, Esq.* (3 vols., Philadelphia, 1792), II, 282–312 (Evans 24407).

More than three months after "The New Roof" was published, Hopkinson wrote Thomas Jefferson that the essay "had a great Run. . . . You will probably see it in some of the Papers as it was reprinted in I believe every state" (6 April, CC:665). Reprints have been located in fourteen newspapers printed by 28 April 1788: Vt. (1), N.H. (1), Mass. (1), Conn. (2), N.Y. (2), N.J. (1), Pa. (4), Md. (1), S.C. (1). On 15 January the Baltimore *Maryland Gazette* reprint of "The New Roof" was prefaced with this statement by "Another Customer": "Mr. Hayes, If it will be no inconvenience to Mr. M. [Luther Martin] to suspend for one day, his history *of imaginary* treasons and *unexecuted* plots, you will be

pleased to insert in its place the enclosed original performance, entitled, The NEW ROOF.—As this is a work of real wit and humour, there can be no doubt but it will give general pleasure to the readers of your paper. Those who are fond of Convention news, will find in it their favourite subject, while it happily exposes the effect of politics on *certain minds*, and furnishes reason to be thankful that we have no such characters in Maryland as the poor crazy fellow it describes.''

''The New Roof'' was also reprinted in the August 1788 issue of the *American Museum* and, except for the last three paragraphs, in the Philadelphia *Federal Gazette* on 1 January 1789. (The *Gazette* also omitted the eleventh paragraph.) Both reprints contain this note: ''European readers may require to be informed that the new roof is allegorical of the new federal constitution; the thirteen rafters, of the thirteen states, &c. &c.'' ''The New Roof'' was probably reprinted in the *Museum* at the request of subscribers. Postmaster General Ebenezer Hazard wrote Mathew Carey, the *Museum's* publisher, on 15 July: ''I have heard it particularly remarked that the *new Roof*, & the Form of the Ratification of the new Constitution by *New Jersey*, have not been inserted in the Musœum:—as to the first, I observed that it probably was omitted as it contained some *Personalities*, & it was undoubtedly your wish to avoid giving Offence'' (Lea and Febiger Collection, PHi). Thomas Allen, a New York City bookseller, also wrote Carey that ''Some of the Subrs. wants to know why the New Roof is not publish'd in the Museum'' (28 July, *ibid.*).

Antifederalists reacted sharply to ''The New Roof.'' The three critics mentioned above attacked Hopkinson for holding a sinecure under the state government and charged or implied that he and other supporters of the Constitution sought offices under the new government.

Federalists were delighted with ''The New Roof.'' Robert Morris, who along with Gouverneur Morris was visiting in Virginia, wrote Hopkinson from Williamsburg that ''I received your obliging letter before my departure from Richmond and had much pleasure not only in reading the 'New Roof' but also in communicating it to others, it is greatly admired, and I tell them if they could but enter into the Dramatis Personæ as we do they would find it still more excellent. The character of Margery is well hit off, how does the old Lady like it? I am not surprised they should baste you in the Freemans Journal, it is what you must expect so long as they have any body to Wield a Pen. I observe they will not let me alone, although no Author. . . . Mr. Wythe, yesterday at dinner introduced the New Roof as a subject and after expressing his approbation, very modestly supposed it to be one of your productions, Mr. G. Morris and myself joined in that Opinion, thus you see, that whether you intend it or not, there always appear some Characteristic Marks in your writings that disclose the Fountain from whence they Spring'' (21 January, Redwood Collection, Maryland Historical Society). A spurious copy of a letter to ''Centinel'' claimed that ''One *infernal piece*, called the new roof,'' had so ''poisoned'' the minds of people that they now supported the Constitution (*Pennsylvania Mercury*, 29 January, RCS:Pa. Supplement, 838). And a gentleman from Baltimore County, Md., asserted that ''The Baltimore people and those in my neighbourhood are highly pleased with the New Roof. Nothing has so satisfactorily illustrated the absurdity that the federal government can exist independently of the state

governments as the idea of the Roof remaining suspended in the air after the walls have fallen away'' (''Extract of a letter from a gentleman in Baltimore county,'' *Independent Gazetteer*, 2 February, RCS:Md., 280).

On 6 February Francis Hopkinson, writing as ''A.B.'' in the *Pennsylvania Gazette*, built upon ''The New Roof'' and published a song: ''The RAISING: A New SONG for Federal Mechanics'' (CC:504). By 14 August this song was reprinted sixteen times: N.H. (2), Mass. (3), R.I. (1), Conn. (2), N.Y. (2), Pa. (1), Md. (1), Va. (2), S.C. (1), Ga. (1). Four of these newspapers and the *Pennsylvania Gazette* had reprinted ''The New Roof.'' ''The RAISING'' was also reprinted in the July issue of the *American Museum* and in the *Federal Gazette* on 1 January 1789—both of which identified Hopkinson as the author. (See also *Miscellaneous Essays*, II, 320–22.)

For the entire item, see CC:395.

. . . Now the principal arguments and objections with which Margery [George Bryan] had instructed William, Jack, and Robert [i.e., William Findley, John Smilie, and Robert Whitehill], were,

1st. That the architects had not exhibited a bill of scantling[(a)] for the new roof, as they ought to have done; and therefore the carpenters, under pretence of providing timber for it, might lay waste whole forests, to the ruin of the farm. . . .

To these objections, James the architect [James Wilson], in substance, replied,

1st. As to the want of a bill of scantling, he observed, that if the timber for this roof was to be purchased from a stranger, it would have been quite necessary to have such a bill, lest the stranger should charge in account more than he was entitled to; but as the timber was to be cut from our own lands, a bill of scantling was both useless and improper—of no use, because the wood always was and always would be the property of the family, whether growing in the forest, or fabricated into a roof for the mansion house—and improper, because the carpenters would be bound by the bill of scantling, which, if it should not be perfectly accurate, a circumstance hardly to be expected, either the roof would be defective for want of sufficient materials, or the carpenters must cut from the forest without authority, which is penal by the laws of the house. . . .

[Note from *Vermont Gazette* reprint of 28 January 1788]
(a) Bill of Rights.

America

New York Daily Advertiser, 31 December 1787 (excerpts)

This essay was written by Noah Webster who, according to his diary for 28 December 1787, was ''Busy answering the address of the dissenting mem-

bers of Pensylvania'' (RCS:N.Y. Supplement, 124). The ''Dissent'' (BoR, II, 197–203n) was reprinted in three New York City newspapers during the last week of December: *New York Morning Post, Daily Advertiser*, and *New York Journal*. Webster sent his essay to the editor of the *Daily Advertiser*, thinking that the editors of the *Morning Post* and *Journal* would reprint it. When they did not, Webster had the following item printed in the *Daily Advertiser* on 5 January 1788: ''The Writer of the Address, under the signature of america, expected that the Printers, who published the *Address* and *Dissent* of the *Minority* in Pennsylvania, would insert the Answer, without any particular request. He flatters himself that they will still notice it, as soon as possible.'' Despite this piece, only a part of one paragraph of ''America'' was ever reprinted. Webster included excerpts of this essay in his *A Collection of Essays and Fugitiv Writings* . . . (Boston, 1790) (Evans 23053), 142–50. For the entire essay, see CC:399.

To the DISSENTING MEMBERS of the
late CONVENTION of PENNSYLVANIA.

. . . You object, Gentlemen, to the powers vested in Congress. Permit me, to ask you, where will you limit their powers? What bounds will you prescribe? You will reply, *we will reserve certain rights, which we deem invaluable, and restrain our rulers from abridging them.* But, Gentlemen, let me ask you, how will you define these rights? would you say, *the liberty of the Press shall not be restrained*? Well, what is this liberty of the Press? Is it an unlimited licence to publish *any thing and every thing* with impunity? If so, the Author, and Printer of any treatise, however obscene and blasphemous, will be screened from punishment. You know, Gentlemen, that there are books extant, so shockingly and infamously obscene and so daringly blasphemous, that no society on earth, would be vindicable in suffering the publishers to pass unpunished. You certainly know that such cases *have* happened, and *may* happen again—nay, you know that they are *probable.* Would not that indefinite expression, *the liberty of the Press*, extend to the justification of every *possible publication*? Yes, Gentlemen, you know, that under such a general licence, a man who should publish a treatise to *prove his maker a knave*, must be screened from legal punishment. I shudder at the thought!—But the truth must not be concealed. The Constitutions of several States *guarantee that very licence.*

But if you attempt to define the *liberty of the Press*, and ascertain what cases shall fall within that privilege, during the course of centuries, where will you *begin*? Or rather, where will you *end*? Here, Gentlemen, you will be puzzled. Some publications certainly *may* be a breach of civil law: You will not have the effrontery to deny a truth so obvious and intuitively evident. Admit that principle; and unless you can define precisely the cases, which are, and are not a breach of law, you have no right to say, the liberty of the Press shall not be restrained; for such

a license would warrant *any breach of law*. Rather than hazard such an abuse of privilege, is it not better to leave the right altogether with your rulers and your posterity? No attempts have ever been made by a Legislative body in America, to abridge that privilege; and in this free enlightened country, no attempts could succeed, unless the public should be convinced that an abuse of it would warrant the restriction. Should this ever be the case, you have no right to say, that a future Legislature, or that posterity shall not abridge the privilege, or punish its abuses. ⟨The very attempt to establish a permanent, unalterable Constitution, is an act of consummate arrogance. It is a presumption that we have all possible wisdom—that we can foresee all possible circumstances—and judge for future generations, better than they can for themselves.⟩

But you will say, that trial by jury, is an unalienable right, that ought not to be trusted with our rulers. Why not? If it is such a darling privilege, will not Congress be as fond of it, as their constituents? An elevation into that Council, does not render a man insensible to his privileges, nor place him beyond the necessity of securing them. A member of Congress is liable to all the operations of law, except during his attendance on public business; and should he consent to a law, annihilating any right whatever, he deprives himself, his family and estate, of the benefit resulting from that right, as well as his constituents. This circumstance alone, is a sufficient security.

But, why this outcry about juries? If the people esteem them so highly, why do they ever neglect them, and suffer the trial by them to go into disuse? In some States, *Courts of Admiralty* have no juries—nor Courts of Chancery at all. In the City-Courts of some States, juries are rarely or never called, altho' the parties may demand them; and one State, at least, has lately passed an act, empowering the parties to submit both *law* and *fact* to the Court. It is found, that the judgment of a Court, gives as much satisfaction, as the verdict of a jury, as the Court are as good judges of fact, as juries, and much better judges of law. I have no desire to abolish trials by jury, although the original design and excellence of them, is in many cases superseded.—While the people remain attached to this mode of deciding causes, I am confident, that no Congress can wrest the privilege from them.

But, Gentlemen, our legal proceedings want a reform. Involved in all the mazes of perplexity, which the chicanery of lawyers could invent, in the course of 500 years,[1] our road to justice and redress is tedious, fatiguing and expensive. Our Judicial proceedings are capable of being simplified, and improved in almost every particular. For God's sake, Gentlemen, do not shut the door against improvement. If the people of America, should ever spurn the shackles of opinion, and venture to

leave the road, which is so overgrown with briers and thorns, as to strip a man's cloaths from his back as he passes, I am certain they can devise a more easy, safe, and expeditious mode of administering the laws, than that which harrasses every poor mortal, that is wretched enough to want *legal* justice. In Pennsylvania, where very respectable merchants, have repeatedly told me, they had rather lose a debt of fifty pounds, than attempt to recover it by a legal process, one would think that men, who value liberty and property, would not restrain any Government from suggesting a remedy for such disorders.

Another right, which you would place beyond the reach of Congress, is the writ of *habeas corpus*. Will you say that this right may not be suspended in *any* case? You dare not. If it may be suspended in any case, and the Congress are to judge of the necessity, what security have you in a declaration in its favor? You had much better say nothing upon the subject.

But you are frightened at a standing army. I beg you, Gentlemen, to define a *standing army*. If you would refuse to give Congress power to raise troops, to guard our frontiers, and garrison forts, or in short, to enlist men for any purpose, then we understand you—you tie the hands of your rulers so that they cannot defend you against any invasion. This is protection indeed! But if Congress can raise a body of troops for a year, they can raise them for a *hundred years*, and your declaration against *standing armies* can have no other effect, than to prevent Congress from denominating their troops, a *standing army*. You would only introduce into this country, the English farce of mechanically passing an annual bill for the support of troops which are never disbanded. . . .

You would likewise restrain Congress from requiring *excessive bail*, or imposing *excessive fines* and *unusual punishment*. But unless you can, in every possible instance, previously define the words *excessive* and *unusual*—if you leave the discretion of Congress to define them on occasion, any restriction of their power by a general indefinite expression, is a nullity—mere *formal nonsense*. What consummate arrogance must you possess, to presume you can *now* make *better* provision for the Government of these States, during the course of ages and centuries, than the future Legislatures can, on the spur of the occasion! Yet your whole reasoning on the subject implies this arrogance, and a presumption that you have a right to legislate for posterity!

But to complete the list of unalienable rights, you would insert a clause in your declaration, *that every body shall, in good weather, hunt on his own land, and catch fish in rivers that are public property*. Here, Gentlemen, you must have exerted the whole force of your genius! Not even

the *all-important* subject of *legislating for a world* can restrain my laughter at this clause! As a supplement to that article of your bill of rights, I would suggest the following restriction:—"That Congress shall never restrain any inhabitant of America from eating and drinking, *at seasonable times*, or prevent his lying on his *left side*, in a long winter's night, or even on his back, when he is fatigued by lying on his *right*."—This article is of just as much consequence as the 8th clause of your proposed bill of rights [to fowl and hunt].

But to be more serious, Gentlemen, you must have had in idea the forest-laws in Europe, when you inserted that article; for no circumstance that ever took place in America, could have suggested the thought of a declaration in favor of hunting and fishing. Will you forever persist in error? Do you not reflect that the state of property in America, is directly the reverse of what it is in Europe? Do you not consider, that the forest-laws in Europe originated in *feudal tyranny*, of which not a trace is to be found in America? Do you not know that in this country almost every farmer is Lord of his own soil? That instead of suffering under the oppression of a Monarch and Nobles, a class of haughty masters, totally independent of the people, almost every man in America is a *Lord himself*—enjoying his property in fee? Where then the necessity of laws to secure hunting and fishing? You may just as well ask for a clause, giving licence for every man to till *his own land*, or milk *his own cows*. The Barons in Europe procured forest-laws to secure the right of hunting on *their own land*, from the intrusion of those who had no property in lands. But the distribution of land in America, not only supersedes the necessity of any laws upon this subject, but renders them absolutely trifling. The same laws which secure the property in land, secure to the owner the right of using it as he pleases.

But you are frightened at the prospect of a *consolidation of the States*. I differ from you very widely. I am afraid, after all our attempts to unite the States, that contending interests, and the pride of State-Sovereignties, will either prevent our union, or render our Federal Government weak, slow and inefficient. The danger is all on this side. If any thing under Heaven now endangers our liberties and independence, it is that single circumstance.

You harp upon that clause of the New Constitution, which declares, that the laws of the United States, &c. shall be the supreme law of the land; when you know that the powers of the Congress are defined, to extend only to those matters which are in their nature and effects, *general*. You know, the Congress cannot meddle with the internal police of any State, or abridge its Sovereignty. And you know, at the same

time, that in all general concerns, the laws of Congress must be *supreme*, or they must be *nothing*[2] . . .

1. This number was changed to "five thousand" years in *A Collection of Essays and Fugitiv Writings*. . . .

2. The reprint of "America" in *A Collection of Essays and Fugitiv Writings* . . . ends at this point.

Thomas Jefferson to Uriah Forrest
Paris, 31 December 1787 (excerpt)[1]

. . . [Enclosure] . . .

. . . I will now tell you what I do not like.—First, the Omission of a Bill of rights, providing clearly, & without the aid of sophisms, for freedom of religion, freedom of the press, protection against standing armies, restriction of monopolies, the eternal & unremitting force of the habeas corpus laws, & trials by jury in all matters of fact triable by the laws of the land, & not by the law of Nations; to say, mr. Wilson does, that a bill of rights was not necessary, because all is reserved in the case of the general government which is not given, while in the particular ones all is given which is not reserved, might do for the audience to which it was addressed:[2] but it is surely a gratis dictum, the reverse of which might just as well be said; & it is opposed by strong inferences from the body of the instrument, as well as from the omission of the clause of our present confederation which had made the reservation in express terms. it was hard to conclude because there has been a want of uniformity among the states as to the cases triable by jury, because some have been so incautious as to dispense with this mode of trial in certain cases, therefore the more prudent states shall be reduced to the same level of calamity. it would have been much more just & wise to have concluded the other way, that as most of the states had preserved with jealousy this sacred palladium of liberty, those who had wandered should be brought back to it: and to have established general right rather than general wrong. for I consider all the ill as established, which may be established. I have a right to nothing which another has a right to take away; & Congress will have a right to take away trials by jury in all civil cases. let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular; & what no just government should refuse, or rest on inferences. . . .

1. RC, Andre deCoppet Collection, Princeton University. For the entire letter see CC: Vol. 2, pp. 488–92n. This letter is a reply to Forrest's letter of 11 December (CC:Vol. 2,

pp. 474–75). The enclosure is a press copy in the Jefferson Papers in the Library of Congress. It is an extract, with significant alterations, from Jefferson's letter of 20 December to James Madison (BoR, II, 207–8).

2. See James Wilson's speech of 6 October 1787, BoR, II, 25–28.

Marquis de Lafayette to George Washington
Paris, 1 January 1788 (excerpt)[1]

. . . It is Needless for me to tell You that I Read the New Proposed Constitution[2] With An Unspeackable Eagerness and Attention—I Have Admired it, and find it is a Bold, large, and Solid frame for the Confederation—the Electionneering Principles With Respect to the Two Houses of Congress are Most Happily Calculated—I am only Affraid of two things—1st the Want of a declaration of Rights 2ly the Great Powers and Possible Continuance of the President, Who May one day or other Become a State Holder—Should My observations be well founded, I Still am Easy on two Accounts—The first that a Bill of Rights May Be Made if Wished for By the People Before they Accept the Constitution—My other Comfort is that You Cannot Refuse Being Elected President—and that if You think the Public Vessel Can Stir Without Such Powers, You Will Be able to lessen them, or Propose Measures Respecting the Permanence, Which Cannot fail to Insure a Greater Perfection in the Constitution, and a New Crop of Glory to Yourself—But in the Name of America, of Mankind at large, and Your Own fame, I Beseech You, my dear General, Not to deny Your Acceptance of the office of President for the first Years[3]—You only Can Settle that Political Machine, and I foresee it Will furnish An Admirable Chapter in Your History. . . .

1. RC, Hubbard Collection, Lafayette College, Easton, Pa. Printed: Abbot, *Washington, Confederation Series*, VI, 5–7n. Lafayette misdated the letter "january the 1st 1787."

2. Washington had sent Lafayette a copy of the Constitution on 18 September 1787 (*ibid.*, V, 334).

3. For Washington's reply of 28 April, see BoR, II, 437–38.

Giles Hickory
New York American Magazine, 1 January 1788

This essay by "Giles Hickory," denying the need for a bill of rights, was published in the December 1787 issue of the *American Magazine*, the first issue of the magazine. Noah Webster, a native of Connecticut who had recently moved to New York City from Philadelphia, was the editor of the magazine, while Samuel Loudon, the publisher of the *New York Packet*, was its printer. Loudon announced in the *Packet* on 1 January 1788 that on that day the December issue of the *American Magazine* was published.

On 23 January 1788 an anonymous writer in the *New York Journal* (RCS:N.Y., 639–44), possibly Samuel Osgood, a member of the Confederation Board of

Treasury, criticized the magazine in general and the article by "Giles Hickory" in particular. The anonymous writer correctly identified the magazine's editor (i.e., Webster) as "Giles Hickory." Webster himself verified this attribution when he reprinted "Giles Hickory" in a compilation of his essays entitled *A Collection of Essays and Fugitiv Writings. On Moral, Historical, Political and Literary Subjects* (Boston, 1790), 45–48 (Evans 23053). This essay was also reprinted in the *New York Morning Post* on 10 January. Webster published other essays as "Giles Hickory" in the *American Magazine's* issues of January (RCS:N.Y., 738–45n), February (BoR, II, 345–55), and March (RCS:N.Y., Supplement, 198–203) 1788, two of which focused on legislatures.

One of the principal objections to the new Federal Constitution is, that it contains no *Bill of Rights*. This objection, I presume to assert, is founded on ideas of government that are totally false. Men seem determined to adhere to old prejudices, and reason *wrong*, because our ancestors reasoned *right*. A Bill of Rights against the encroachments of Kings and Barons, or against any power independent of the people, is perfectly intelligible; but a Bill of Rights against the encroachments of an elective Legislature, that is, against our *own* encroachments on *ourselves*, is a curiosity in government.

One half the people who read books, have so little ability to apply what they read to their own practice, that they had better not read at all. The English nation, from which we descended have been gaining their liberties, inch by inch, by forcing concessions from the crown and the Barons, during the course of six centuries. *Magna Charta*, which is called the palladium of English liberty, was dated in 1215, and the people of England were not represented in Parliament till the year 1265.[1] Magna Charta established the rights of the Barons and the clergy against the encroachments of royal prerogative; but the commons or people were hardly noticed in that deed. There was but one clause in their favor, which stipulated that, "no villain or rustic should, by any fine, be bereaved of his carts, plows and instruments of husbandry."[2] As for the rest, they were considered as a part of the property belonging to an estate, and were transferred, as other moveables, at the will of their owners. In the succeeding reign, they were permitted to send Representatives to Parliament; and from that time have been gradually assuming their proper degree of consequence in the British Legislature. In such a nation, every law or statute that defines the powers of the crown, and circumscribes them within determinate limits, must be considered as a barrier to guard popular liberty. Every acquisition of freedom must be established as a *right*, and solemnly recognized by the supreme power of the nation; lest it should be again resumed by the crown under pretence of ancient prerogative; For this reason, the habeas corpus act passed in the reign of Charles 2d,[3] the statute of the

2d of William and Mary,[4] and many others which are declaratory of certain privileges, are justly considered as the pillars of English freedom.

These statutes are however not esteemed because they are unalterable; for the same power that enacted them, can at any moment repeal them; but they are esteemed, because they are barriers erected by the Representatives of the nation, against a power that exists independent of their own choice.

But the same reasons for such declaratory constitutions do not exist in America, where the supreme power is *the people in their Representatives.* The *Bills of Rights*, prefixed to several of the constitutions of the United States, if considered as assigning the reasons of our separation from a foreign government, or as solemn declarations of right against the encroachments of a foreign jurisdiction, are perfectly rational, and were doubtless necessary. But if they are considered as barriers against the encroachments of our own Legislatures, or as constitutions unalterable by posterity, I venture to pronounce them nugatory, and to the last degree, absurd.

In our governments, there is no power of legislation, independent of the people; no power that has an interest detached from that of the public; consequently there is no power existing against which it is necessary to guard. While our Legislatures therefore remain elective, and the rulers have the same interest in the laws, as the subjects have, the rights of the people will be perfectly secure without any declaration in their favor.

But this is not the principal point. I undertake to prove that a standing *Bill of Rights* is *absurd*, because no constitutions, in a free government, can be unalterable. The present generation have indeed a right to declare what *they* deem a *privilege*; but they have no right to say what the *next* generation shall deem a privilege. A State is a supreme corporation that never dies. Its powers, when it acts for itself, are at all times, equally extensive; and it has the same right to *repeal* a law this year, as it had to *make* it the last. If therefore our posterity are bound by our constitutions, and can neither amend nor annul them, they are to all intents and purposes our slaves.

But it will be enquired, have we then no right to say, that trial by jury, the liberty of the press, the habeas corpus writ and other invaluable privileges, shall never be infringed nor destroyed? By no means. We have the same right to say that lands shall descend in a particular mode to the heirs of the deceased proprietor, and that such a mode shall never be altered by future generations, as we have to pass a law that the trial by jury shall never be abridged. The right of Jury-trial, which we deem invaluable, may in future cease to be a privilege; or

other modes of trial more satisfactory to the people, may be devised. Such an event is neither impossible nor improbable. Have we then a right to say that our posterity shall not be judges of their own circumstances? The very attempt to make *perpetual* constitutions, is the assumption of a right to control the opinions of future generations; and to legislate for those over whom we have as little authority as we have over a nation in Asia. Nay we have as little right to say that trial by jury shall be perpetual, as the English, in the reign of Edward the Confessor, had, to bind their posterity forever to decide causes by fiery Ordeal, or single combat. There are perhaps many laws and regulations, which from their consonance to the eternal rules of justice, will always be good and conformable to the sense of a nation. But most institutions in society, by reason of an unceasing change of circumstances, either become altogether improper or require amendment; and every nation has at all times, the right of judging of its circumstances and determining on the propriety of changing its laws.

The English writers talk much of the omnipotence of Parliament; and yet they seem to entertain some scruples about their right to change particular parts of their constitution. I question much whether Parliament would not hesitate to change, on any occasion, an article of Magna Charta. Mr. Pitt, a few years ago, attempted to reform the mode of representation in Parliament.[5] Immediately an uproar was raised against the measure, as *unconstitutional*. The representation of the kingdom, when first established, was doubtless equal and wise; but by the increase of some cities and boroughs and the depopulation of others, it has become extremely *unequal*. In some boroughs there is scarcely an elector left to enjoy its privileges. If the nation feels no great inconvenience from this change of circumstances, under the old mode of representation, a reform is unnecessary. But if such a change has produced any national evils of magnitude enough to be felt, the present form of electing the Representatives of the nation, however *constitutional*, and venerable for its antiquity, may at any time be amended, if it should be the sense of Parliament. The *expediency* of the alteration must always be a matter of opinion; but all scruples as to the *right* of making it are totally groundless.

Magna Charta may be considered as a contract between two parties, the King and the Barons, and no contract can be altered but by the consent of both parties. But whenever any article of that deed or contract shall become inconvenient or oppressive, the King, Lords and Commons may either amend or annul it at pleasure.

The same reasoning applies to each of the United States, and to the Federal Republic in general. But an important question will arise from the foregoing remarks, which must be the subject of another paper.[6]

1. In this year, Simon de Montfort, acting in the name of Henry III, summoned two knights from each county and two burgesses from each borough. This was the first time that burgesses were called to sit in Parliament. (Henry III had succeeded his father John, who had agreed to accept the terms of the Magna Carta.)

2. The reference is probably to chapter 30 of the Magna Carta which states that "No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman."

3. The Habeas Corpus Act was adopted by Parliament in 1679.

4. The reference is probably to the Bill of Rights adopted by Parliament in 1689.

5. The reference is to William Pitt, the Younger, who, in 1783, sought to curtail bribery and heavy expenses at elections, to deprive corrupt voters of the franchise, and to add knights from the counties and representatives from the city of London.

6. Perhaps a reference to his essay in the March issue (BoR, II, 345–55).

Mariot

Massachusetts Centinel, 2 January 1788[1]

"*Held in the magick chain of* words *and* forms,
And definitions *void*" THOMS.[2]

Mr. RUSSELL, The opposers of the new Constitution do not appear to possess the genuine ideas of FREEMEN, but rather those of *vassals*—I will give an instance to prove it.—Because the BARONS OF ENGLAND, who, as well as the people thereof, were complete *slaves* from the Conquest to King John's reign, and after, and who could think only like slaves, *demanded* of that king certain *rights*, as expressed in the great Charter of England, (so called)—the antifederalists would have the PEOPLE of AMERICA, who are FREEMEN, who know how to prize freedom—and who possess primarily all POWER, *demand* of their *servants*, the *grant* of certain RIGHTS, PRIVILEGES and POWERS.—*What absurdity?*—Now if thus thinking is not to be "*held in the magick chains of words and forms, and definitions void*," I do not know what is. Besides the chief design of this *so-much-talked-of Magna Charta*, was indeed, to make the king *dependent, not on the people*, but *on the Lords*. The title of Magna Charta is in these words: "*We* (the King) GRANT *of our own free will, the following privileges*" to whom? To the people? No—"*to the archbishops, bishops, priors, and barons of our kingdom, &c.*"[(a)] [3] Were we, Mr. Russell, a nation of *slaves*, and should happen to think that our situation might be easier under *many* than under *one* tyrant; then a resort to the Magna Charta of England, as an example for us to follow in requesting our *intended masters* to *demand* from our *then master*, would be in point:—But how it can be thought so as we now are, is to me strange, and can only be accounted for, as I before hinted, by supposing that the ideas of those who suggested it, were from some cause or other fitted for slavery, or who wish that their fellow citizens might think themselves so.

It was not the Great Charter that either gave birth to, or which secures the liberties of the People of England—It was their knowledge, and the liberality of modern times which gave it to them—which still continues—and will continue it.—This political knowledge is no where so generally disseminated as in America—and as liberality is extending itself still wider and wider—we have all the essentials requisite to the PRESERVATION of our FREEDOM.

> (a) Let us suppose a Congressional act to run thus "We the Congress of the United States, of our own free will grant to our subjects the rights of trial by jury—freedom of the press, &c." and we shall then see the glaring absurdity of such a demand as the antifederalist[s] propose to be made. *Risum teneatis!*[4]

1. For a reply to "Mariot," see "One of the People," Boston *Independent Chronicle*, 3 January (RCS:Mass., 610), and for "Mariot's" rejoinder, see *Massachusetts Centinel*, 5 January (RCS:Mass., 623–24).

2. James Thomson, "Summer," *The Seasons* (London, 1744), lines 1531–32. "Summer" was published in 1727, but the lines quoted here first appeared in the 1744 edition. The lines are from a passage praising Francis Bacon (1561–1626), philosopher and Lord Chancellor of England:

> "The great Deliverer he! who from the Gloom
> Of cloyster'd Monks, and Jargon-teaching Schools,
> Led forth the true philosophy, there long
> Held in the magic Chain of Words and Forms,
> And Definitions void: he led Her forth,
> Daughter of HEAVEN! that, slow-ascending still,
> Investigating sure the Chain of Things,
> With radiant Finger points to HEAVEN again."

3. Chapter 1 of the Magna Carta (1215) reads: "In the first place have granted to God and by this our present Charter have confirmed, for us and our heirs in perpetuity, that the English church shall be free, and shall have its rights undiminished and its liberties unimpaired: and we wish it thus observed, which is evident from the fact that of our own free will before the quarrel between us and our barons began, we conceded and confirmed by our charter freedom of elections, which is thought to be of the greatest necessity and importance to the English church, and obtained confirmation of this from the lord pope Innocent III, which we shall observe and wish our heirs to observe in good faith in perpetuity. We have also granted to all the free men of our realm for ourselves and our heirs for ever, all the liberties written below, to have and hold, them and their heirs from us and our heirs." Although freemen included more than just the barons and prelates, they still made up only a small portion of the English population.

4. "Could you help laughing" (Horace).

Samuel Osgood to Samuel Adams
New York, 5 January 1788 (excerpt)[1]

. . . I am, Sir, for a fair, explicit & efficient general Government—But I cannot consent, in this Way, to be conclaved out of a Bill of Rights.—

This Government is expressly, by its admiring Advocates, to reach the Life Liberty & Property of the Individual Person of every one in the united States, capable of feeling the Government—Man is a weak, foolish Creature of Habit; governed by Instinct as other Animals; tame & docile; without Sagacity: therefore, tho' he dislikes it at first, Time will meliorate & soften his Savage Manners & Disposition; he will then bear the Chains quietly.—But, Sir, this is not true.—This mighty fabric will not give us an efficient Government for many years; the Supporters of it allow it; what will it do? It will be shut up in the ten Miles Square with very little Knowledge of its Operations, until by Bribery and Corruption, & an undue Use of the public Monies, Nabobs are created in each State; & then the Scenery will be changed; the Mask will be laid aside.—It has cost me many a Sleepless Night to find out the most obnoxious Part of the proposed Plan.—And I have finally fixed upon the exclusive Legislation in the Ten Miles Square.—This space is capable of holding two Millions of People—Here will the Wealth and Riches of every State center—And shall there be in the Bowels of the united States such a Number of People, brot up under the Hand of Despotism, without one Priviledge of Humanity, that they can claim; all must be Grace & favor to them.—Shall the supreme Legislature of the most enlightened People on the Face of the Earth; a People who have recently offered up,—upon the Altar of Freedom, near sixty thousand of their bravest Men, & near two hundred Millions of specie Dollars—be secluded from the World of Freemen; & seated down among Slaves & Tenants at Will?—And have not this supreme Legislature a Right to naturalize me there; whether I will or not? What means the establishing of an uniform Rule of Naturalization?—What does it mean in Equity? May not the sovereign of the Country, Grant exclusive Privilidges to all that are willing to be naturalized in that hallowed Spot?—What an inexhaustable Fountain of Corruption are we opening? The Revenue there collected will not belong to the united States.

Upon proper Principles, I wish the Legislature of the united States to have Ten Miles Square—But let the People settled there, have a Bill of Rights. Let them know that they are Freemen—Let them have the Liberty of Speech, of the Press, of Religion, &ca Let them when numerous enough be represented in the lower House.—Let the Revenue there collected be accounted for to the united States as other Revenue—Let the Laws made for the internal Police, have a partial & not a general Stile.—Mankind are too much disposed to barter away their Freedom for the Sake of Interest.—The deluded Philadelphians have however egregiously miscalculated. If the Ten Miles Square should be

taken agreeably to their offer, one Mile above the no[r]thern Liberties of their City—a very few years will empty the City of Philadelphia[2]—They will be naturally dazzled with the Splendor of the New Government & Insect like, be drawn to it. . . .

1. RC, Adams Papers, NN. For the entire letter, see RCS:Mass., 618–22.

2. On 15 December 1787 the Pennsylvania Convention voted to cede a tract of land not exceeding ten miles square to the new Congress under the Constitution. The land was to be located anywhere within Pennsylvania except "the city of *Philadelphia*, the district of *Southwark*, and that part of the *Northern Liberties* included within a line running parallel with *Vine-street*, at the distance of one mile northward thereof, from the river *Schuylkill* to the southern side of the main branch of *Cohockshink* creek thence down the said creek to its junction with the river *Delaware* . . ." (RCS:Pa., 611–13).

The Republican
Connecticut Courant, 7 January 1788

TO THE PEOPLE.

It is generally agreed, that the old articles of Confederation are inadequate to answer the great national purposes, for which they were designed. It is likewise generally agreed, that the new constitution is better adapted to answer these great purposes. All the objections which are made against it, are reducible to this single one; that it is dangerous to liberty. Say the opposers of it, if we adopt it, our liberties have no security. If this objection be well-founded, if the new Constitution does destroy the safe-guards of that liberty for which American blood and treasure has been lavished, let us exert every nerve to oppose it. God forbid, that we, my countrymen, who have maintained our liberties in spite of the seducing artifices, the hostile arms, and the horrid cruelties, which Britain has called into action for the purpose of enslaving us, should now through our folly surrender those precious rights, which God and nature have given to men. But on the other hand, if those patriotic citizens, whom we have chosen from among us, for their knowledge of government, love of liberty, and love of their country, have formed a plan of government, which, without endangering our liberties, is calculated to render us a great, respectable, and happy nation; let us not, through folly and ill-directed jealousy, reject this which is probably the only system for promoting our national felicity, which we shall ever have an opportunity of adopting. If we reject this system, which comes recommended to us by the unanimous assent of the ablest and best men, that the American continent could appoint; what reason or encouragement can there be for the States ever to appoint another convention? I use the expression *unanimous assent,* because those three gentlemen,[1] who refused to subscribe to the Constitution, did so, not

from substantial objections to it, but from partial considerations, which can have no weight with a free and enlightened people.

In answer to the objection before stated, I say, that adopting the new Constitution will not expose us to the loss of liberty; but the great barriers of liberty will still remain, and, in all human probability, will continue to be its security for ages and generations to come. The principal circumstances, which render liberty secure, are a spirit of liberty among the people—a general diffusion of knowledge—a general distribution of property—a militia of freemen—and a fair representation in the supreme Legislature.

The people of the United States possess in a high degree a spirit of liberty. This is a principle which is natural to the human mind. We love to have the command of our own actions and the direction of our own interests. Our minds rise with indignation against oppression and tyranny. These natural feelings have never been eradicated from our minds by subjection to the will of a tyrant. But that freedom with which the principles of liberty have been discussed, that ardour with which they have been inculcated upon the public minds, that long struggle for liberty which has called these principles into action, have so fixed and confirmed the spirit of liberty that it must and will long continue to be a ruling principle of our actions, and guard us against the encroachments of tyranny.

Another circumstance highly conducive to the security of liberty, is the general diffusion of knowledge among the great body of the people. The American citizens in general are by far better educated and more knowing than the people at large in other countries. And in those states where the people have heretofore had the fewest advantages for learning, they are setting up schools, and gaining fast in point of useful knowledge. This is a circumstance of the highest importance to a free people. For where the great body of the citizens are ignorant, and incapable of discerning their true interests, they may be duped by artful and factious men, and led to do things destructive to their own rights and liberties. But a sensible intelligent people, who have access to the sources of information, and are capable of discerning what measures are conducive to the public welfare, will not be easily induced to act contrary to their own interests, and destroy those rights and liberties which are the foundations of public happiness.

Another circumstance highly favourable to liberty, is the general distribution of property among the people at large. In most of the American states, property is more equally divided among the great body of the people, than it is in any other country. Our laws and customs, which divide great estates among all the children of the deceased owner; the

way being open for industrious men, who are born to no inheritance, to acquire property; and the plenty and cheapness of land, will long cause property to be diffused among the people at large. The people do and will possess freeholds of their own; they can live comfortably and independently on their farms. Men in such a situation feel the dignity of human nature, and scorn to be dependent on the will of a tyrant. When they exercise the important right of choosing men to act for them in a public capacity, they will act independently; we may reasonably presume, they will choose those who will be faithful to their country.

It is a capital circumstance in favour of our liberty, that the people themselves are the military power of our country. In countries under arbitrary government, the people oppressed and dispirited, neither possess arms, nor know how to use them. Tyrants never feel secure, until they have disarmed the people. They can rely upon nothing but standing armies of mercenary troops for the support of their power. But the people of this country have arms in their hands; they are not destitute of military knowledge; every citizen is required by Law to be a soldier; we are all martialed into companies, regiments, and brigades, for the defence of our country. This is a circumstance which encreases the power and consequence of the people; and enables them to defend their rights and priveleges against every invader.

If in addition to the advantages, which I have before mentioned, for maintaining liberty, a people have a free constitution of government, their liberties are secured by the strongest barriers. The great distinction between a free and an arbitrary government is this; in the former the people give their assent to the Laws by which they are governed; in the latter, the laws are made by a power which they cannot controul. And the plain reason, why the former kind of government secures the rights and liberties of the people, is, that the people will not consent to laws which are oppressive to themselves. In a country of any considerable extent, the people cannot meet together in person to make Laws; consequently they must do it, if at all, by their representatives. Now if they have the privilege of [electing?] representatives to act for them, if they have an opportunity of choosing a fair and adequate repres[entation?], and if no law can be made without the consent [of these?] representatives, we may presume the people will be free from oppression, because their own interest will induce them to choose those who will be faithful to their country. The new constitution gives the people a fair opportunity to elect their representatives for the general Legislature. The state Legislatures are to make the regulations and arrangements for the choice, and to make the privilege still more secure,

these regulations are subject to the revision of the general Legislature. The constitution expressly provides that the choice shall be by the people, which cuts off both from the general and state Legislatures the power of so regulating the mode of election, as to deprive the people of a fair choice. As to the number of representatives, it is certainly as great as it ought to be. It is greater than the numbers in Congress under the old confederation; and we never have found, that the number of members in Congress was so small as to occasion any danger or inconvenience. As our country grows more populous and wealthy, it will be proper to have a more numerous representation. Accordingly it is wisely provided in the new constitution, that the number of representatives shall increase as that of the people increases. Upon the whole, therefore I am warranted in saying, that there is full provision made in the new constitution for an adequate representation of the people.

Now as the people of the United States profess a spirit of liberty to induce them to maintain their rights; as there is such a diffusion of knowledge among them, as enables them to judge by what methods liberty is to be supported; as the people at large possess such a share of property as gives them the rank of independent freemen; as the people themselves are the military power of our country; these important supports of liberty, together with our choice of representatives in the lower branch of the Legislature, would secure our rights, even supposing the power of the president and Senate were vested in a king and body of Nobles independent of the people. I am justified in making this assertion, by the circumstances which the people of the United States are in, and by the experience of other nations. With all the advantages for maintaining the rights of a free people, which I have mentioned, and when no oppressive measures of government could be taken without the consent of our representatives, unless by an open violation of our constitutional rights, our liberties would stand firm. The people, we may safely presume, would choose men of abilities and integrity, who would withstand every attempt to undermine their liberties. The spirit of the people would oppose every open and direct attempt to enslave them. Experience likewise justifies my assertion. The people of England possess a political constitution similar to the one I have been describing, though, far inferior to it in the fairness of representation, and though their advantages for maintaining liberty are far inferior to those which I have mentioned as possessed by us; yet they have long maintained their liberties. Kings have attempted to tyrannize over them; but they brought one to the block, and expelled another from his throne and kingdom. It is true, their liberties are now impaired; but it is by causes which I have not time to delineate, and

which are not applicable to the political circumstances of this country. And impaired as their liberties are, their King still finds it necessary to submit to the public voice in the measures of his government.

But, my fellow citizens, it is not with us, as it is with other nations who have been called free, and have been said to enjoy the privileges of a free government. Other nations have been called free, if they have had only the privilege of choosing one branch of their legislature, and that in a very partial unequal manner. And such a privilege has insured to them the blessings of a free government, until they become so degenerate and corrupt, that they had not virtue enough to keep alive the sacred flame of liberty. But we, besides electing the representatives in the federal legislature, choose the members of the senate in a manner which even the opposers of federal measures cannot, without self-contradiction, deny to be highly conducive to the safety of our liberties. These gentlemen say, that our liberties are safe in the hands of the state-legislatures. The state-legislatures appoint the senators; they will be faithful to the people; they will have better opportunities than the people to know the characters of those whom they appoint; therefore they will appoint men who breathe the very spirit of the state-legislatures, and consequently deserve the most unlimited confidence of the people. No encroachment can be made upon our liberties without their consent; they will withstand every encroachment; therefore they will afford full security for our liberties.

The President of the United States is to be appointed in a manner which is wisely adapted to concentrate the general voice of the people. He is an officer appointed by the people. If he wishes to be appointed again, he depends upon the people. He therefore will be the guardian of the liberties of the people. The president, the senate, the representatives are all chosen by the people. They form a tripple wall around our liberties. In short, the constitution breathes the spirit of liberty. The people breathe the spirit of liberty. The state legislatures will still possess extensive powers; they will have great influence upon the general government; we ought to presume, they will be faithful to the people; their influence will therefore be in favour of liberty. We possess advantages superior to those of any other people to maintain our liberty. Therefore if we adopt the new constitution, if we will act like rational freemen, and choose men of abilities and integrity to carry this plan of government into execution, we may with reason expect, that our liberties and privileges will endure as long as is consistent with the instability of all human affairs. But if we reject this constitution, it must be upon the principle, that those, who are chosen by the people, are not fit to be trusted with the necessary powers of government. If this

be a just principle, all our republican governments are but snares to enslave the people; a free government is impracticable; and we must adopt the gloomy idea, that anarchy or tyranny is the only alternative for men.

But, my fellow citizens, the prospect of human affairs is not so gloomy. Act out your native good sense; be not afraid to entrust men appointed by yourselves with the powers necessary for promoting your interest; learn the characters of those whom you appoint to places of trust and power; choose men who know what the public good requires; and have virtue to act accordingly; act rationally upon the great political subjects which are submitted to your consideration. Our national hopes are fast approaching to their grand crisis. The friends of liberty throughout the world have their eyes fixed upon us; if we have not wisdom and virtue enough to unite *government and liberty;* the cause of liberty must be given up for lost. We are a young, virtuous, and growing people; we have the good wishes of all mankind; nature has bountifully bestowed upon us the blessings of climate and soil; the extent of our country affords room for our rapid increase for ages to come; a wise system of government we want; a wise system of government is offered for our acceptance; receive the offered good; put it in practice with wisdom, moderation, and virtue; and you may become a great, flourishing and happy nation.

State of Connecticut, January 2, 1788.

1. Elbridge Gerry, George Mason, and Edmund Randolph refused to sign the Constitution.

Thomas B. Wait to George Thatcher
Portland, Maine, 8 January 1788 (excerpt)[1]

. . . Your arguments against the necessity of a Bill of Rights are ingenious; but, pardon me my friend, they are not convincing.—You have traced the origin of a Bill of Rights accurately.—The People of England, as you say, undoubtedly made use of a Bill of Rights to obtain their ~~rights and~~ liberties of their soverigns; but is this an argument to prove that they ought not now to make use of Bills in defence of those liberties?—shall a man throw away his sword, and refuse to defend a piece of property, for no other reason than that his property was obtained by that very sword?—Bills of Rights have been the happy instruments of wresting the privileges and rights of the people from the hand of Despotism; and I trust God that Bills of Rights will still be made use of by the people of America to defend them against future encroachments of despotism—Bills of Rights, in my opinion, are the grand bulwarks of freedom.

But, say ~~you~~, some however necessary in state Constitutions, there can be no necessity for a Bill of Rights in the Continental plan of Govt.—because every Right is reserved that is not *expressly* given up—Or, in other words, Congress have no powers but those *expressly* given by that Constitution.—This is the *doctrine* of the *celebrated* Mr. Wilson;[2] and as you, my friend, have declared it *orthodox*, be so good as to explain the meaning of the following Extracts from the Constitution—Art. I Sect. 9.—"The privilege of the writ of Habeas Corpus shall *not* be suspended &c."—"*No* bill of attainder or ex post facto law shall be passed."—"*No* money shall be drawn from the treasury" &c.—"*No* title of nobility shall be granted by the United states."—Now, how absurd—how grosly absurd is all this, if Congress, in reality, have no powers but those particularly specified in the Constitution!—

It will not do, my friend—for God's sake let us not deny self-evident propositions—let us not sacrifice the truth, that we may establish a favourite hypothesis;—in the present case, the liberties and happiness of a world may also be sacrificed.—

There is a certain darkness, duplicity and studied ambiguity of expression runing thro' the whole Constitution which renders a Bill of Rights peculiarly necessary.—As it now stands but very few individuals do, or ever will understand it.—Consequently, Congress will be its own *interpreter*. . . .

1. RC, Thatcher Papers, Chamberlain Collection, MB. Printed: William F. Goodwin, ed., "The Thatcher Papers," *The Historical Magazine*, VI (1869), 261–63. For the entire letter, see CC:422.

2. See James Wilson's speech of 6 October 1787, BoR, II, 26.

George Washington to Edmund Randolph
Mount Vernon, Fairfax County, Va., 8 January 1788[1]

The letter which you did me the honor of writing to me on the 27th. Ulto., with the enclosure, came duly to hand.—I receive them as a fresh instance of your friendship and attention.—For both I thank you.—

The diversity of Sentiments upon the important matter which has been submitted to the People, was as much expected as it is regretted, by me.—The various passions and medium by which men are influenced are concomitants of falibility—engrafted into our nature for the purposes of unerring wisdom; but had I entertained a latent hope (at the time you moved to have the Constitution submitted to a second Convention)[2] that a more perfect form would be agreed to—in a word that any Constitution would be adopted under the impressions and Instructions of the members, the publications which have taken place

since would have eradicated every form of it—How do the sentiments of the influencial characters in *this* State who are opposed to the Constitution, and have favoured the public with their opinions, quadrate with each other?—Are they not at varience on some of the most important points?—If the opponants in the *same* State cannot agree in *their* principles what prospect is there of a coalescence with the advocates of the measure when the different views, and jarring interests of so wide and extended an Empire are to be brought forward and combated.[3]—

To my judgement, it is more clear than ever, that an attempt to amend the Constitution which is submitted, would be productive of more heat, & greater confusion than can well be conceived.—There are some things in the new form, I will readily acknowledge wch. never did, and I am persuaded never will, obtain my *cordial* approbation; but I then did conceive, and now do most firmly believe, that, in the aggregate, it is the best Constitution that can be obtained at this Epocha; and that this, or a dissolution of the Union awaits our choice, & are the only alternatives before us—Thus beli[e]ving, I had not, nor have I now any hesitation in deciding on which to lean.—

I pray your forgiveness for the expression of these sentiments.—In acknowledging the receipt of your Letter on this subject, it was hardly to be avoided, although I am well disposed to let the matter rest entirely on its own merits—and mens minds to their own workings.—

1. FC, Washington Papers, DLC. With this letter, Washington responded to Randolph's letter of 27 December (Abbot, *Washington, Confederation Series*, V, 511) in which Randolph had enclosed the pamphlet edition of his letter to the Speaker of the Virginia House of Delegates (BoR, II, 211–16).

2. For Randolph's proposal in the Constitutional Convention, see BoR, I, 150–52.

3. On 20 December James Madison wrote Washington that "It is a little singular that three of the most distinguished Advocates for amendments [George Mason, Richard Henry Lee, and Edmund Randolph]; and who expect to unite the thirteen States in their project, appear to be pointedly at variance with each other" (CC:359).

Massachusetts Salem Mercury, 8 January 1788[1]

The objection to the New Constitution, that there is no instrument accompanying it, to secure the people in their rights, is truly weak and puerile—It is as if a trading company were forming, and a merchant should refuse to subscribe the articles of association, because, though they require a deposit of only a small proportion of his property, with the appropriation of which he is well satisfied, yet they do not declare that the money which he has in his scrutoire at home is his own, and that the company have no right to meddle with it without his consent. How ridiculous would such an objection be! What concern could the company have with the property which was not assigned to their use?—

So, as the people now possess all the rights and all the power of freemen, what can the Congress have to do with those rights which they keep at home—which they do not throw into the common stock—over which they do not expressly give Congress any power? "We the People," &c. is a complete declaration, that the People are the Source of Power—that they make the constitution—and that, whenever they find it incompatible with their interests, they have a right to abolish it.—Where, then, can be the mighty danger in adopting it?

1. Reprinted: *New Hampshire Spy*, 18 January; Newburyport, Mass., *Essex Journal*, 23 January.

Dentatus
Philadelphia Independent Gazetteer, 8 January 1788

You are desired, Mr. Oswald, to insert the following repugnant and contradictory clauses, as they stand in the bill of rights and the constitution of Pennsylvania, in the Independent Gazetteer,

The father, and the framers of the declaration of rights and the constitution, are called on for an explanation of them.

DENTATUS.

In the 2nd article of the declaration of rights, are the following words:

"*Nor can any man, who acknowledges the being of a* GOD *be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship: 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.*"

In the 10th section of the plan or frame of government are these words,

"And each member, *before he takes his seat*, shall make and subscribe the following declaration."

"I do believe in one GOD, the Creator and Governor of the universe, the rewarder of the good and the punisher of the wicked. *And I do acknowledge the scriptures of the old and new testament to be given by* DIVINE INSPIRATION."

January 7, 1788.

Jeremiah Hill to George Thatcher
Biddeford, Maine, 9 January 1788 (excerpt)[1]

. . . some objectors the other day were hanging on to the Bill of rights yet I told them, in answer, that seven States out of thirteen had no Bill of rights to their State Constitutions,[2] from thence we must conclude

that a Majority of the States did not view a Bill of rights of such mighty Consequence, that a Bill of Rights was no more than a Collection of Sentences from the Common Law, which sprang from the Law of nature, collected & compiled together from the experience of former Ages, and were now laid down as established Maxims and rules in all civilized nations, and that those states which had not formed a particular Bill of rights, had the whole Code of Common Law for their Bill of rights, and that there was no danger, in my Opinion, of the rulers of a free people ever trampling on the Common Law or antient usages of all civilized nations—However I feel confident that the Massachusetts will adopt it, to sum up the chief Objections at once is *Interest*, it being such a powerfull Motive that *frail* reason cannot oppose it. . . .

1. RC, Chamberlain Collection, Thatcher Papers, MB. For a longer excerpt of this letter, see RCS:Mass., 658–60n.

2. See "One of the People," *Maryland Journal*, 25 December 1787, note 1 (BoR, II, 210n).

Pennsylvania Gazette, 9 January 1788[1]

The late Fœderal Convention, says a Correspondent, which framed the proposed constitution of the United States, was elected by a unanimous vote of all the states—consequently it was composed of men of every principle and prejudice upon the subject of government. But should a second Convention be appointed, the members of it would be chosen by the foederalists only, for they are evidently the majority now in *most*, if not in *all*, the states. The consequence of this might be, a Constitution much less acceptable to the antifœderalists than the one now offered to them. Under these circumstances, is it not better for them to adopt the government under deliberation?—It is the duty of the antifoederalists, in a particular manner in Pennsylvania, to learn wisdom from the conduct of the republican party, who, by opposing the constitution of the state, threw themselves out of their share of power and offices. If the new government should be a bad one, the kindest thing its opposers can do is, to join in supporting it—for in so doing they will best be able to alter it, or to shelter their friends and country from the evils and defects with which they charge it.

1. This item was also printed in the *Pennsylvania Packet* on 9 January and reprinted in the *Pennsylvania Mercury*, 10 January, *Pennsylvania Journal*, 12 January, and *New Jersey Journal*, 16 January.

Pennsylvania Packet, 9 January 1788[1]

A correspondent has informed us, that no motion or question was ever proposed in the Federal Convention upon the subject of a bill of

rights. Mr. Gerry's and Mr. Mason's ideas of the necessity of such an apendage to a free government were picked up from the Centinels, &c. after the rising of the Convention. Instead of a motion from Mr. Mason for a bill of rights, our correspondent informs us, that he both moved for and advocated the Aristocratic proposition, that pecuniary qualifications should be required in the holders of offices, and that the qualification for one of them (and that not the highest) should be *sixteen thousand dollars.*

1. Reprinted: *Pennsylvania Journal*, 12 January; *New York Journal*, 12 January; *New Jersey Journal*, 16 January; *New York Packet*, 18 January.

Conciliator

Philadelphia Independent Gazetteer, 9 January 1788[1]

To all honest Americans.

Every one of you, my friends, has at some period of his life acknowledged the truth of the following fundamental principles of a free government; and no liberal man in any country ever denied them.

1. Liberty of conscience ought ever to be inviolable.
2. An unrestrained press is the bulwark of freedom.
3. Trial by his peers is the birthright of every American.
4. All powers that belong to state legislatures, and that are not expressly delegated by compact to a collective government, *for the good of the whole*, ought ever to be retained by them respectively.
5. No power, so delegated *for the good of the whole*, ought ever to be counteracted by any particular state.

Let every honest *supporter* of the new federal constitution, read these fundamental principles, and, laying his hand on his heart, let him ask himself whether they be just or not:—He ought not to be called a *Federalist*, if he does not say AY.

Let every honest *opposer* to the new federal constitution, also read these fundamental principles, and, laying his hand on his heart, let him ask himself the same question:—He ought to have a worse name than *Antifederalist*, if he does not also say AY.

Here then all honest men agree; and in the name of honesty, my friends, let me beseech you to allow the calm voice of reason to prevail; without listening to the heated declamations of political zealots, on either side of the question.

Every legislature in the union has in some way or other formally adopted these fundamental principles; they therefore, cannot disagree about them. On the other hand, every man of reflection, from Georgia to New-Hampshire, allows, that due energy, consistent with these prin-

ciples, is absolutely necessary to the existence of any federal government at all.

But I am answered, "there is no bill of rights to the new constitution. Implications will not do; these fundamentals may be violated; when the liberties of a whole country are at stake, positive limits are indispensable; and the argument that '*what is not expressly given, is expressly by consequence, reserved*,'[2] is too novel, and too loose for the people at large; it is not generally understood; and nothing should be left for future sophistry to destroy."

All this I grant, and the late federal convention have left the provision in your power.—"No, they have not (is immediately replied) we must adopt or reject it *in toto*."—That is also true, but after it is adopted, in *toto*, will not the first Congress be in fact another FEDERAL CONVENTION, and is not the extent of the judicial power, under which the objections fall, expressly referred to them, *to be regulated and controuled?* Every member of this new body must obey his instructions, and as every legislature in the union, agrees in these plain fundamentals, there cannot be a doubt of their general adoption; more especially as the constitution itself allows them by implication. As to the necessity of adopting or rejecting the general plan *in toto*, it is the effect of experiment.—When the former confederation was made, several of the states proposed numerous amendments; the consequence was, that every proposition was uniformly negatived, each state supporting only its own amendments, and opposing all the rest.[3]

It is only therefore on fundamental, immutable, and acknowledged principles that we ought to allow ourselves to think of amendments, for any thing more, must either be futile, or defeat the whole plan. Let every state, then, after adopting the plan, direct its members of Congress to have these fundamentals sculptured in marble, making a part of the Walls of the Federal State-house, and placed over the president's chair; that, like the commandments over the altar, they may attract the eye, guide the judgment, and awaken the conscience of every beholder.

There are men in all countries who would be despots if they could;—there are men in all countries who can only be important by the prevalence of anarchy.—We in America have seen a HUTCHINSON,[4] who like the Roman tyrant, wished to behead every freeman at a stroke: We have also seen a SHAYS, who endeavored to trample every principle of civil society under the foot of a freebooter.[5] But in all countries, the majority are honest men, and these abound in America; it is to these I write, and it is these I wish to unite in one grand object,—THE POLITICAL SALVATION OF THEIR COUNTRY.

1. On 8 January the *Independent Gazetteer* indicated that "Conciliator" would appear the next day. "Centinel" XIII, *Independent Gazetteer*, 30 January (CC:487), attacked "Conciliator" and identified him as James de Caledonia (i.e., James Wilson).

2. See James Wilson's speech of 6 October 1787 (BoR, II, 25–28).

3. For the amendments proposed to the Articles of Confederation by the state legislatures that were all rejected by Congress, see CDR, 95–137.

4. A reference to colonial governor of Massachusetts Thomas Hutchinson.

5. A reference to Daniel Shays and Shays's Rebellion.

James Madison to Edmund Randolph
New York, 10 January 1788 (excerpts)[1]

My dear friend

. . . I received two days ago your favor of Decr. 27. inclosing a copy of your letter to the Assembly.[2] I have read it with attention, and I can add with pleasure, because the spirit of it does as much honor to your candour, as the general reasoning does to your abilities. Nor can I believe that in this quarter the opponents to the Constitution will find encouragement in it. You are already aware that your objections are not viewed in the same decisive light by me as they are by you. I must own that I differ still more from your opinion that a prosecution of the experiment of a second Convention will be favorable even in Virginia to the object which I am sure you have at heart. It is to me apparent that had your duty led you to throw your influence into the opposite scale, that it would have given it a decided and unalterable preponderancy; and that Mr. Henry would either have suppressed his enmity, or been baffled in the policy which it has dictated. It appears also that the ground taken by the opponents in different quarters, forbids any hope of concord among them. Nothing can be farther from your views than the principles of different setts of men, who have carried on their opposition under the respectability of your name. In this State the party adverse to the Constitution, notoriously meditate either a dissolution of the Union, or protracting it by patching up the Articles of Confederation. In Connecticut & Massachussetts, the opposition proceeds from that part of the ~~State~~ people who have a repugnancy in general to good government, to any substantial abridgment of State powers, and a part of whom in Massts. are known to aim at confusion, and are suspected of wishing a reversal of the Revolution. The Minority in Pennsylva. as far as they are governed by any other views than an habitual & factious opposition, to their rivals, are manifestly averse to some essential ingredients in a national Government. You are better acquainted with Mr. Henry's politics than I can be, but I have for some time considered him as driving at a Southern Confederacy and as not

farther concurring [in?] the plan of amendments than as he hopes to render it subservient to his real designs. Viewing the matter in this light, the inference with me is unavoidable that were a second trial to be made, the friends of a good constitution for the Union would not only find themselves not a little differing from each other as to the proper amendments; but perplexed & frustrated by men who had objects totally different. A second Convention would of course be formed under the influence, and composed in great measure of the members of opposition in the several States. But were the first difficulties overcome, and the Constitution re-edited with amendments, the event would still be infinitely precarious. Whatever respect may be due to the rights of private judgment, and no man feels more of it than I do, there can be no doubt that there are subjects to which the capacities of the bulk of mankind are unequal and on which they must and will be governed by those with whom they happen to have acquaintance and confidence. The proposed Constitution is of this description. The great body of those who are both for & against it, must follow the judgment of others not their own. Had the Constitution been framed & recommended by an obscure individual, instead of the body possessing public respect & confidence, there can not be a doubt, that altho' it would have stood in the identical words, it would have commanded little attention from most of those who now admire its wisdom. Had yourself, Col. Mason, Col. R. H. L. Mr. Henry & a few others, seen the Constitution in the same light with those who subscribed it, I have no doubt that Virginia would have been as zealous & unanimous as she is now divided on the subject. I infer from these considerations that if a Government be ever adopted in America, it must result from a fortunate coincidence of leading opinions, and a general confidence of the people in those who may recommend it. The very attempt at a second Convention strikes at the confidence in the first; and the existence of a second by opposing influence to influence, would in a manner destroy an effectual confidence in either, and give a loose [rein] to human opinions; which must be as various and irreconcileable concerning theories of Government, as doctrines of Religion; and give opportunities to designing men which it might be impossible to counteract. . . .

1. RC, Madison Papers, DLC. For the entire letter, see RCS:Va., 288–91.
2. For the letter, see RCS:Va., 275–76; for the enclosure, see BoR, II, 211–16.

An Impartial Citizen
Petersburg Virginia Gazette, 10 January 1788 (excerpt)[1]

. . . As to amendments, which are so strenuously insisted on by some, the Constitution itself has pointed out a most judicious and most un-

exceptionable mode of amending, to wit,—that when two-thirds of both Houses think proper, amendments shall be proposed; or, on the application of two thirds of the State Legislatures, a Convention shall be called for that purpose, and the amendments so proposed to become a part of this Constitution, when afterwards ratified by three-fourths of the State Legislatures, or Conventions from three-fourths of the States, as the one or the other mode of ratification shall be proposed by Congress. Now as this mode is so obviously rational and undeniably judicious, to adopt another mode of amending, besides its seeming impracticability, is unnecessary and inexpedient. It is unnecessary, because every inconvenience or possible defect in this system may and can be radically and entirely removed by the amendatory mode included in itself. It is seemingly impracticable to adopt another mode of amending, as the very circumstance of this frame of government's being objected to, strongly proves the difficulty of a general concurrence by all the States, with any proposition. A certain Honorable Gentleman in a letter to the Executive, and which has been published, has insisted on the facility and expediency of deputing another Convention to amend the Constitution devised by the last.[2] With deference to so eminent a character, I humbly conceive, that the plan he proposes is by no means so eligible as that pointed out by the Constitution itself, which extends its remedy to every possible defect that experience may prove real; whereas his plan excludes every amendment which the Convention he proposes may not recollect or point out; or then, the omissions will be the ground of another Convention, and so on as often as experience will prove an actual omission or omissions. Moreover, if, as he proposes, another Convention should be deputed to amend, it is very probable, if not certain, that any amendments they may recommend, will be equally as exceptionable and as much objected to, as the Constitution devised by the last Convention: They could not possibly think of amendments that would meet with general approbation, nay, perhaps they might be considered as no melioration of the present system, and then, by this gentleman's way of reasoning, another Convention should be delegated to amend the amendments, &c. which would be endless. Some other eminent persons have asserted that it was impolitic to adopt a form of government which included amendatory provisions; that the idea of entering into a government confessedly defective, and in need of amendments, was enough to disgust any people, and a sufficient reason for its rejection. To which I answer, that all the world has allowed, that it was a good government which had in itself a capacity of amending; that a government which undeniably possesses many excellent regulations, and still

provides for such amendments, and secures such remedies, as experience will evince to be necessary, is one of the best systems that human sagacity and ingenuity can devise, must be respected by all the sensible part of mankind, and be the idol, admiration, and envy, of all nations. I add, that as human nature is frail, and no people ever did, or ever can suppose, that the plan of government they first adopt, can at once be perfect, that the bare idea of entering into a form of government confessedly admirable, which provides for the fallibility of human nature, and secures a constitutional mode of amending every possible defect, is sufficient to inspire the good people of this country with respect, confidence, admiration and zeal, for this constitution. I therefore contend that though we have indisputably a right to propose amendments, yet it is unnecessary and inexpedient to exercise that right on the present occasion, and that rejection or adoption of this Constitution is the alternative. . . .

1. Reprinted in the *Pennsylvania Mercury*, 31 January, and, in part, in the *Massachusetts Gazette* on 12 and 15 February. For the entire essay, see RCS:Va., 293–99.

2. See Richard Henry Lee to Governor Edmund Randolph, 16 October 1787 (BoR, II, 5–12n).

A Farmer
Exeter, N.H., Freeman's Oracle, 11 January 1788 (excerpts)

The publication of this Antifederalist essay set off an exchange in the *Freeman's Oracle* between "A Farmer" and "Alfredus." On 18 January "Alfredus" responded to "A Farmer," who then replied on 1 February. "Alfredus" then responded again on 8 February (BoR, II, 267–72n, RCS:N.H., 101–4n, 106–9, respectively). "The Farmer" waited until 6 June to respond to "Alfredus," who answered "A Farmer" on 13 June (RCS:N.H., 327–30, 340–43n). After this initial exchange both writers resorted heavily to scurrilous assaults on each other. The exchange ended on 18 October.

On 13 June "Alfredus" identified "A Farmer" as Thomas Cogswell. On 13 June "Alfredus" also identified Cogswell as the author of "The Anti-fœderalist No. II," *Freeman's Oracle*, 8 February (RCS:N.H., 118–20).

After crossing out two other handwritten names, someone indicated that "A Farmer" was "Thos Cogswell" in the 11 January issue of the *Freeman's Oracle*. The name was also handwritten in the issues of 1 February, 6 June, and 18 October, where subsequent essays by "A Farmer" or "The Farmer" appeared. These particular issues of the *Oracle* were once owned by William Plumer and are now at the Boston Athenæum. The same person identified "Alfredus" as "Samuel Tenny MD" in the *Oracle* of 18 January, 8 February, and 13 June. "The Farmer's" highly critical essays noted, or at least implied, that "Alfredus" was both an officer in the Continental Army and a medical doctor during the Revolutionary War, which match Tenney's career.

For the entire essay, see RCS:N.H., 78–85n.

My Friends, and Fellow-Farmers,

Much has been said respecting the new Constitution offered you, by the Convention, under the direction of Congress; and much ought to be said, in favour of it, not only from the characters of those gentlemen who composed the Convention (whose characters I revere) but from the many excellencies it contains—Yet, neither the characters of the gentlemen, the excellencies it contains, nor the deranged state of our public affairs, ought to have so much influence upon your minds, as to adopt this Constitution, if it is incompleat. Examine it, my friends, with discernment and candor, and judge for yourselves—I think you will find the foundation is laid, and materials are wanting to render it compleat.

In order to adopt it, as it now stands, with any degree of safety, in my humble opinion, a Bill of Rights is absolutely necessary, to secure the liberties of the people. Although the celebrated Mr. Wilson, in his address to the citizens of Philadelphia, respecting a Bill of Rights, urged, that in a state constitution, every thing that was not reserved, was given; but, in a Federal Constitution, the reverse of the proposition prevailed, and what was not given was reserved.[1] I must confess it was ingeniously got over, but not to my satisfaction, (in many instances people may be silenced, but not convinced) for upon the very principle that Mr. Wilson urged, that there is no need of a bill of rights, for what is not given is reserved, would be the foundation I should go upon to urge the great necessity of one,—for if we look into the Constitution, we shall find the different articles therein contained, are expressed in very general and extensive terms: ONE, in particular, which is sufficient to show the necessity of a Bill of Rights, viz.—"This Constitution and the laws of the United States, which shall be hereafter made in pursuance thereof, shall be the supreme law of the land, and the judges, in every state, shall be bound thereby, any thing in the Constitution or law of any state to the contrary notwithstanding;"—Therefore, I say, take this clause, together with the extensive latitude given in several other articles, is too much power to lodge in the hands of any set of men, however virtuous they may be without being properly guarded; nor can I think it in the least derogatory to the honour of the supreme authority of the United States, to have a Bill of Rights stated in the Constitution, wherein it shall be declared, thus far you may go and no further.[2] We have found by experience, the great advantage of a Bill of Rights in our state constitution; when the legislature passed sundry laws infringing on the Bill of Rights, we had it in black and white to show them they were wrong; and to their honour be it spoken, they have

repealed one; and so far as the necessities of the people would admit the other.[3]

Much has been said respecting Congress exercising exclusive legislation in all cases whatsoever over a jurisdiction, not exceeding ten miles square, in such a place as Congress agree to reside in. If that is a Hobby Horse that Congress wishes to mount, and the state they conclude to reside in will give them the jurisdiction, and the individuals consent to it;—Let them mount, for if we prevent them they may get worse mounted. But on our part,—Let us secure the liberties of individuals of the United States, and guard and fetter the hobby horse, in such a manner, as not to let him kick our heads off, if we should have occasion to pass thro' or remain in that district a certain time—The judicial court of the United States is an object worthy of our serious attention, and to have a jury always to attend the same when sitting, composed of members from each state, is necessary to secure the liberties of the people. In order to this, let the President of each state cause a box to be made, and with the advice of council, enroll thirty of the most respectable characters in the state, and on the first Monday in January, every year, or any other convenient time; let the President order his Secretary to draught out two of the names of those persons so enrolled and put in the box, to attend the grand court of the United States as jurymen, whenever they shall sit. If any accident should prevent one or both said jurymen's attendance, and the obstructions appear sufficient to the President, then he shall proceed to a new choice; if otherwise, let them be fined for non attendance. And those two persons so draughted, having served one year, let their names be taken out of the box, and two others put in, and so in rotation. And once in three years let the box be examined by the President and council and corrected as circumstances require. The pay and travel, and mode of payment to be fixed by Congress.—Perhaps some will object against this, as being too expensive; but when we consider that here will be the result of causes of great magnitude; and the respectable appearance such a court will make; and the honour that will redound to the United States; I think, as a Farmer, I should be willing to contribute largely toward it; there will be two jurors, and one may be empannel'd no ways interested in the cause, but to do justice—The liberty of the Press is essential to a free people, it ought therefore to be inviolably preserved and secured in the Bill of Rights, and no duty or tax to be imposed thereon, of what name or nature soever. But if individuals will publish indecent pieces, leave them to the law of the land to abide the consequence. . . .

. . . Standing armies are dangerous *in time of peace to the liberties of a free people*, provided they are kept and voted their continuance yearly,

they soon get ingrafted into and become a part of the Constitution, therefore they ought not to be kept up, on any pretext whatsoever, any longer than till the enemy are driven from your doors. War is justifiable on no other principle than self-defence, it is at best a curse to any people; it is comprehensive of most, if not all the mischiefs that do or can afflict mankind; it depopulates nations; lays waste the finest countries; destroys arts and sciences, it many times ruins the best men, and advances the worst, it effaces every trace of virtue, piety and compassion, and introduces all kinds of corruption in public affairs; and in short, is pregnant with so many evils, that it ought ever to be avoided if possible; nothing but self-defence can justify it. An army, either in peace or war, is like the locust, and caterpillers of Egypt;[4] they bear down all before them—and many times, by designing men have been used as an engine to destroy the liberties of a people, and reduce them to the most abject slavery. I have both summered and wintered with an army: *You, my friends*, in general, know nothing of the evils that attend it; guard and secure it well in your Bill of Rights, that it may not be in the power of any set of men to trample your liberties under their feet with it. Organize your militia, arm them well, and under Providence they will be a sufficient security. I have once born arms in defence of my country;—I am now willing to resque [i.e., risk] myself and property, together with my liberties and privileges, (with a well regulated militia) and when they are invaded, I will gird on my sword and appear in their defence. And, if my children after me will not do it, let them loose theirs with their heads into the bargain. . . .

Rouse up, my friends, a matter of infinite importance is before you on the carpet, soon to be decided in your convention, viz, The New Constitution—Seize the happy moment—Secure to yourselves and your posterity the jewel Liberty, which has cost you so much blood and treasure, by a well regulated Bill of Rights, from the encroachments of men in power. For if Congress will do these things in the dry tree when their power is small, what wont they do when they have all the resources of the United States at their command?—They are the servants of the public;—You have an undoubted right to set their wages, or at least to say, thus far you and those under you may go and no further.[5] . . .

1st. The merchant wishes to have it adopted, that trade might be regulated. 2dly. Another set of men wishes to have it adopted, that the idea of paper money might be annihilated. 3dly. Another class of men wish to have it take place, that the public might be enabled to pay off the foreign debt, and appear respectable abroad among the nations. So do I, with all my heart; but in neither of these cases do I wish to

see it adopted, without being guarded on all sides with a Magna Chartha, or a Bill of Rights, as a bulwark to our liberties. . . .

1. See James Wilson's speech of 6 October 1787, BoR, II, 25–28.
2. Job 38:11.
3. A reference to the "Ten Pound Act" being declared unconstitutional for violating the New Hampshire Bill of Rights and its subsequent repeal. See Richard M. Lambert, "The 'Ten Pound Act' Cases and the Origins of Judicial Review in NH," *New Hampshire Bar Journal*, 43 (2002), 37–54.
4. Psalms 105:34.
5. See note 2, above.

An Honest American
Philadelphia Independent Gazetteer, 11 January 1788

To CONCILIATOR.[1]

SIR, I acknowledge the truth and importance of your five "fundamental principles of a free government," in the fullest manner; and were these secured in the proposed federal constitution, it should meet with my hearty approbation. You confess, however, that the constitution itself does not secure these rights; but alledge "that the first Congress will be, in fact, another federal convention, and ought to be directed by their constituents to have these fundamentals sculptured on marble, making a part of the wall of the federal State-house, and placed over the president's chair, that, like the commandments over the altar, they may attract the eye, guide the judgement, and awaken the conscience of every beholder." But, sir, let me ask you, what security even this would be to the people of America, for the permanent enjoyment of these rights? Is it not an acknowledged principle, in all legislative bodies, that whatever law is enacted at one session, may be repealed at any succeeding one? However well disposed, then, the first, or any other Congress, may be to secure—the liberty of conscience—the liberty of the press—trial by jury—the sovereignty of the particular states, &c. yet can any thing short of a formal declaration of these in a *constitution*, by which alone any future Congress can be bound, afford to the people any rational assurance for the continued enjoyment of these sacred rights?

1. For "Conciliator," Philadelphia *Independent Gazetteer*, 9 January 1788, see BoR, II, 243–45n. For "Conciliator's" response to "An Honest American" in the Philadelphia *Independent Gazetteer*, 15 January 1788, see BoR, II, 256–61.

Publius: The Federalist 38
New York Independent Journal, 12 January 1788 (excerpts)

This essay, written by James Madison, was reprinted in the New York *Daily Advertiser* and the *New York Packet*, 15 January, and the *New York Journal*, 25–26

January. All but the first two paragraphs were reprinted in the Exeter, N.H., *Freeman's Oracle* on 15 February. This essay was number 38 in the M'Lean pamphlet edition and number 37 in the newspapers. For the entire essay, see CC:442.

For a general discussion of the authorship, circulation, and impact of *The Federalist*, see CC:201.

. . . As it can give no umbrage to the writers against the plan of the Fœderal Constitution, let us suppose that as they are the most zealous, so they are also the most sagacious of those who think the late Convention were unequal to the task assigned them, and that a wiser and better plan might and ought to be substituted. Let us further suppose that their country should concur both in this favorable opinion of their merits, and in their unfavorable opinion of the Convention, and should accordingly proceed to form them into a second Convention, with full powers and for the express purpose of revising and remoulding the work of the first. Were the experiment to be seriously made, though it requires some effort to view it seriously even in fiction, I leave it to be decided by the sample of opinions just exhibited, whether with all their enmity to their predecessors, they would in any one point depart so widely from their example, as in the discord and ferment that would mark their own deliberations; and whether the Constitution, now before the public, would not stand as fair a chance for immortality, as Lycurgus gave to that of Sparta, by making its change to depend on his own return from exile and death, if it were to be immediately adopted, and were to continue in force, not until a BETTER, but until ANOTHER should be agreed upon by this new assembly of Lawgivers. . . .

. . . Is a Bill of Rights essential to Liberty? The Confederation has no Bill of Rights. . . .

Charles Johnson to James Iredell
Strawberry Hill, Edenton, N.C., 14 January 1788 (excerpt)[1]

. . . For certainly there are few men acquainted with the great, respected, I may almost say adored, characters who formed the late convention, who did not view the new Constitution with an eye strongly prejudiced in its favor. There are, nevertheless, great defects found in it: ought they not to be more attended to even on that account?

For my part I will candidly, and in confidence, declare to you that it is a doubtful point with me, and which I cannot yet bring to a decision, whether it will be better to receive the new Constitution, with all its seeming imperfections on its head, or run the risk of obtaining another Convention, which may revise and amend, expunge those articles that seem repugnant to the liberties of the people—secure our political

liberty by separating the executive, legislative, and judicial powers—affix responsibility to every office—and explicitly secure the trial by jury, according to former usage—the liberty of the press, with all the other rights of the individual which are not necessary to be given up to government, and which ought not and cannot be required for any good purpose. Surely, if there is no immediate, impending danger to prevent the adoption of the measure, it is most devoutly to be wished. This requisite information might easily, as I conceive, be obtained from Congress, as they must be acquainted, by the communications of their ambassadors, with the general aspect of affairs in Europe. I have already said that I have formed no decided opinion; the subject I conceive of too great magnitude, and above me. I only venture my doubts without any apprehension of your placing me in any of our friend Dr. W.'s classes, the burden of each verse of which, if I remember rightly, is, "the government is not for him."[2] . . .

1. Printed: Donna Kelly and Lang Baradell, eds., *The Papers of James Iredell* (Raleigh, N.C., 2003), III, 371–73. Strawberry Hill was the name of the plantation house that Johnson built in Edenton, N.C. For a longer excerpt, see RCS:N.C., 59–61.

2. On 8 November 1787 Dr. Hugh Williamson, a signer of the Constitution, addressed a meeting of freemen of the town of Edenton and Chowan County (RCS:N.C., 10–20n). Near the end of his speech he said, "If there is any man among you that wishes for troubled times and fluctuating measures, that he may live by speculations, and thrive by the calamities of the State; this Government is not for him.

"If there is any man who envies the prosperity of a native citizen, who wishes that we should remain without native merchants or seamen, without shipping, without manufactures, without commerce; poor and contemptible, the tributaries of a foreign country; this Government is not for him.

"And if there is any man who has never been reconciled to our Independence, who wishes to see us degraded and insulted abroad, oppressed by anarchy at home, and torn into pieces by factions; incapable of resistance and ready to become a prey to the first invader; this Government is not for him."

For another excerpt from the speech, see BoR, II, 94–96.

Marlborough, New Hampshire, Town Meeting 15 January 1788 (excerpts)[1]

At a legal meeting of the inhabitants of Marlboro this Day met at the meeting house in Sd town and Proceeded as follows

1st) maid Choice of Lt oliver Wright to Govern Sd meeting . . .

3ly) maid Choice of Lt Jedediah Taynter to Represent this town in Convention to Set at Exeter on the said Wednesday of Febuary Next in order To take into Consideration the Proceedings of the Federal Convention. . . .

Voted to Chuse a Committe to Give the Deligate instructions maid Choice of Mr Reubin Ward Moses Tucker Mr William barker Mr Daniel Cutting and Mr Benone Robbins. . . .

Voted to adjourn this meeting to mr Cummings for one hour

Met according to adjournment and heard the Report of the Committe Which is as follows

To Lieut Jedediah Taynter

Where as We have this Day Chosen You[2] and Appointed You to Represent us in Convention to Accept or Reject the New Proposed Federal Constitution if you Can have our Bill of Rights Secured to us and a Firm Test of the Protestant Religion [(a)] to us & it Will Be Satisfactory other wise Reject the Whole

Marlborough January 15th 1788

anonamus [i.e., unanimous] in Committe Reubin Ward
Moses Tucker
William Barker
Daniel Cutting
Benone Robbins

Voted anonamus [i.e., unanimous] to Except of the [(a)] this meeting [(a)]

attest Jonathan Whipple

(a) Indicates words unreadable in the original record

1. MS (copy), Town Records, Vol. 2, New Hampshire State Library, Concord. Most of New Hampshire's town records were transcribed by order of the state legislature and then stored at the State Library.

2. At this point, the copier of the town record wrote: "(the foregoing underlined word was struck out in the original record)."

Agrippa XII

Massachusetts Gazette, 15 January 1788 (excerpt)[1]

. . . Let us now consider the probable effects of a consolidation of the separate states into one mass; for the new system extends so far. Many ingenious explanations have been given of it; but there is this defect, that they are drawn from maxims of the common law, while the system itself cannot be bound by any such maxims. A legislative assembly has an inherent right to alter the common law, and to abolish any of its principles, which are not particularly guarded in the constitution. Any system therefore which appoints a legislature, without any reservation of the rights of individuals, surrender all power in every branch of legislation to the government. The universal practice of every government proves the justness of this remark; for in every doubtful case it is an established rule to decide in favour of authority. The new system is, therefore, in one respect at least, essentially inferiour to our state constitutions. There is no bill of rights, and consequently a continental

law may controul any of those principles, which we consider at present as sacred; while not one of those points, in which it is said that the separate governments misapply their power, is guarded. Tender acts and the coinage of money stand on the same footing of a consolidation of power. It is a mere fallacy, invented by the deceptive powers of mr. Wilson, that what rights are not given are reserved.[2] The contrary has already been shewn. But to put this matter of legislation out of all doubt, let us compare together some parts of the book; for being an independent system this is the only way to ascertain its meaning. . . .

1. "Agrippa" XII appeared in the *Massachusetts Gazette* in three installments, on 11, 15, and 18 January. This issue of the *Gazette* was misdated 14 January. For a response, see "Junius," *Massachusetts Gazette*, 22 January (BoR, II, 275–77n). For other essays by "Agrippa," see BoR, II, 194–95, 292–94, 302–4.

2. For James Wilson's speech of 6 October 1787, see BoR, II, 25–28.

Conciliator

Philadelphia Independent Gazetteer, 15 January 1788[1]

To an Honest American[2]

SIR, I am happy to find that we are, in essence, agreed, and that if the fundamental principles were secured, the proposed federal constitution would meet with your hearty approbation: Whether that can be done, after the adoption of it, or not, is now the only question.

It would have been better perhaps if these uncontrovertible principles had been incorporated into it in the first instance; but the apparent reason why they were not, is because they were by *implication* incorporated into it under the idea that the powers given were *positive*, and signified ALL the powers intended to be given: "*Thus far shalt thou go*," is expressly said, "*but no farther*," is implied.[3] I beg the indulgence of your patience to dwell a little longer on this argument, although it has been so often, and so ably handled; for the avowal of my sentiments, requires this justification.

In every separate government, the power extends *to all cases whatsoever* that are not excepted, and the rights of the governed are rights of *reservation*; a parent has full power over his child, save only the child's *reserved* rights: The state we live in has, like a parent, full power over us its children, save only our *reserved* rights: Magna Charta, and every bill of rights in the world, stand upon this principle. But in a delegation of powers it is not a usual, nor would it be a safe mode, to express them *negatively* by recapitulating all that is *not* given. If a number of merchants should join together and send a ship to China, they of course would delegate their joint power to the captain, and they would

tell him, "we authorise you (by GOD's permission) to go to China, there dispose of our property, to lay out the neat[4] proceeds in the purchase of another cargo, and return home; engaging on our parts, to be bound by all your transactions conformable to this delegation of power." They would not point out the places to which he should *not* go, and the transactions he should *not* undertake; if they were to give their powers in this *negative* way, any place left out of the list, and any act, unforbidden, might enable this captain to go to that unnamed place, to do that unprohibited act, and to ruin his owners without breaking their orders.

This view of the subject renders even the fundamental principles before stated, unnecessary; but the good people in these states do not perhaps generally see it in the same light, therefore let the point be fixed. In this great business, even prejudice should be gratified, if it can be done with safety—The fourth and fifth principle in particular can never be *fairly* opposed, because no man can *fairly* desire the powers given, to mean more than are expressed; and no man can *fairly* desire to render those expressed, ineffectual; these two, indeed, include every other possible one, and would prevent encroachments both ways. The first, second, third, and any other that the constitution does not itself deny, and that apply equally to all the states, might, or might not, be inserted, as might best satisfy the general wish of the people; but that they should not oppose the spirit of the constitution, and that they should be uniformly applicable to all the states, are indispensable requisites.

After this explanatory justification of my sentiments, I come in course to your objection. Even if these fundamentals were sculptured in marble, they would be secured since "it is an acknowledged principle in all legislative bodies, that whatever law is enacted at one session may be repealed at any succeeding one."[5]—If this principle applied in the present case, it would be a melancholy picture of the imperfection of human affairs, and with the same reason it might be said, that there is no irrefragable security against abuse of power in any government that can be formed by men; for the same degree of strength and wickedness, that could destroy an express *proviso, and the very condition of the existence of Congress*, might destroy every part and principle of any constitution whatever.—It is not an ordinary "law enacted by a legislative body at one session, and repealable at another," for which I contend; but it is what you yourself express to be satisfactory, "a formal declaration of these principles in a *constitution*," and the federal convention, like honest patriots, have left the opening for us: You will find the fifth article thus expressed:—"The Congress, *whenever two thirds of both houses shall*

deem it necessary shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, *shall be valid to all intents and purposes, as part of this constitution*, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.'' We are not confined to any express time when these fundamental principles shall be adopted, and form ''*a part of the constitution*;'' it may be the first act that is done after Congress becomes an organized body; and the object of ANOTHER FEDERAL CONVENTION may be compleatly gained. Thus, you see, that the government is but a trial, and all governments are progressive things, which can never be made compleat till judged of by experiment; in the mean time remedies are constantly in our power, unless we voluntarily destroy that power, by becoming too corrupt to deserve to be free.—Are Americans so much worse than the common race of mortals, as to have none among them worthy of trust, even on trial? Has every principle of political virtue fled from us? If there exists no confidence among us, we surely can never be free, since the first act of a free government implies a confidence in our representatives; a want of it is the grand principle of fear, and fear, says Montesquieu, is the main spring of despotism.[6]—It is hardly to be doubted that *all* the legislatures would agree in these fundamentals, yet if only two-thirds should consent to the proposition, they may be made A PART OF THE CONSTITUTION.

The answers to the mode of amendment, pointed out in the article above quoted, are anticipated by Governor Randolph, whose respectable letter is certainly the work of an able, independent man, and he closes it like an honest one. ''I WILL REGULATE MYSELF BY THE SPIRIT OF AMERICA.''[7]

These 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, than to wait for the uncertain assent of three fourths of the states.*''

1. The passions of designing men are more likely to be enlisted *before* than *after* the adoption of the government, and permit me here to ask if the amendments by ''*a bare majority*'' *of seven states* against the op-

position of *six*; of the unanimous work of *twelve* against the opposition of *none* (Rhode-Island having been silent) can be called the *spirit of America?*

"2. *That a feature in government becomes more and more fixed every day.*"

2. And if the features are beautiful, why should they not be more and more be fixed? Ugly features grow naturally more and more ugly, and general dislike of course encreasing, their dismemberment becomes more and more likely to be consented to.

"3. *That frequent changes of a constitution, even if practicable, ought not to be wished, but avoided as much as possible.*"

3. For this answer I confess myself unprepared; I always thought *the power* of frequent changes, by so great a majority as forms the *spirit of the nation* was a darling principle in civil liberty; for let the government be what it may the people have a right to chuse the one they like best; or *Vox populi* is not *vox Dei.*

"*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 reduced [i.e., induced] to amend.*"

4. Then the *spirit of America* would be against it, and in that case it should be perpetual.

It is not pretended that the words will have any more real force on marble, than on parchment; I only meant by that proposal, to say that being always in sight, they would be a constant memento of every legislator's duty. This is not a new idea; for the law lords in England are obliged, when assembled in the House of Peers, to be seated on woolpacks, that the importance of that staple commodity may be always present to their minds, and under their protection.

I am not a bigoted panegyrist of the new constitution, for I can see some faults in it, but each fault is counterbalanced by many excellencies; and I am somewhat doubtful whether those parts are really faults which appear so to me, for many people place them among its perfections. The question in my mind, therefore, is not whether this constitution is perfect or defective; but whether we shall refuse nineteen ingots, because if we accept them we must also accept a twentieth that is perhaps false gold; and the only alternative is, to possess these riches on that condition, or be condemned to miserable poverty.—Figure to yourself, my good Sir, what our situation would be if before the new plan is adopted, we were to see at the entrance of our ports, one of the armaments which now keep France and England in a state of mutual anxiety.—This is no high coloured picture, for we have only the faith of treaties in our favor to balance both ambition and revenge, and it would not require ten minutes in an European cabinet, to find an

apparent, plausible pretence to begin a war with us.—The observation of the French Minister (Count Montmorin) to the English Envoy (Mr. Grenville) on the subject of the present armaments, ought not to escape our notice. "The faith reposed in treaties (says he) formerly held so sacred, has been several times violated within this century, in a manner so unprecedented that it becomes every power to prepare for war even in the bosom of peace." This shows the French idea of the faith of treaties. The Spanish court when they last declared war against England, found, with all the ease in the world, ninety-nine justifications of their conduct, although they were actuated by one only motive, *the hope of obtaining Gibralter.*

When Sir Joseph York remonstrated the Dutch for giving us supplies contrary to their treaty with England, they reminded him of a sentiment which on a former occasion, originated in his own court. "Treaties between two nations are political compacts binding on both, 'till it becomes the interest and convenience of one or the other, to break them." In this way we might go round the circle of all the powers in Europe, and find the same opinion uniformly prevailing.

What, I say, would be our situation in case of an attack? We have in effect no federal government, we have no money, we have no credit—propositions of loans have filled the newspapers, without collecting enough to pay the printers;—we have not a single ship, nor have we a battery with even its platform in repair; and, except a handful of men on our frontiers, we have not even a military centinel to give an alarm. We have firm and resolute hearts it is true; hearts that in time of action would "fear no danger, but court a wound." These however, would only serve to enable us to bear our misfortunes with fortitude; for our towns might be burned, before we could obtain the only means of effective defence,—A FEDERAL UNION.

Let us then, my friend, look at the great object, and preserve the sheet anchor of all our hopes. As to the idea of delaying the adoption of a new government 'till we can have it amended by a previous convention, I confess I shudder at it; for, a long scene of misery and eventual despotism, appear to me lurking under that cloak. Let us suppose for a moment, that such a convention could be again in our present situation assembled (which, by the way appears to me doubtful). The first amendment that would probably be proposed by the larger states, would be to proportion the representation in the senate, as it is in the other house, and not allow a sixty fifth part of the union to enjoy one thirteenth of its importance. On the other hand, the smaller states would propose to make the representation wholly as it was before, and thereby to give every state an equal weight. Upon this rock the consti-

tution would be wrecked, and all its parts would be scattered in a hurricane of anarchy. The next step would show us the origin of all despotic governments, the boldest desparado would stand forth and become a sceptered tyrant; he would *be obliged* to be such, for if he were to suffer the reins to be slackened, another adventurer would cut his throat, and supplant him. In one word, the alternative is before us, and we may adopt this federal government, or sink under a dissolution. We may as a nation JOIN AND LIVE OR SEPARATE AND DIE. May Heaven guide our choice! and may America offer to the world that political phenomenon, an effective government established in harmony.

1. On 14 January, the *Independent Gazetteer* indicated that "Conciliator" would appear in the next issue. Reprinted: Boston *American Herald*, 10 March.

2. For "An Honest American," Philadelphia *Independent Gazetteer*, 11 January 1788, see BoR, II, 252.

3. Job 38:11.

4. At this time, neat could mean "free from any reductions, clear."

5. For more on the power of one legislature repealing laws of a former legislature, see "Giles Hickory," New York *American Magazine*, 1 March, note 4, and James Iredell: Speech in the North Carolina Convention, 28 July, note 3 (BoR, II, 355n, BoR, III).

6. Montesquieu, *Spirit of Laws*, I, Book III, chapter 9, p. 38: "As virtue is necessary in a republic, and in a monarchy honor, so fear is necessary in a despotic government: with regard to virtue, there is no occasion for it, and honor would be extremely dangerous."

7. For Randolph's letter of 10 October 1787 to the Speaker of the Virginia House of Delegates, published as a pamphlet in late December 1787, see BoR, II, 211–16.

A Republican Federalist
Philadelphia Freeman's Journal, 16 January 1788 (excerpt)[1]

. . . The eyes of the people in the different states where discussion has been allowed, are generally opened, and are determined to defend their liberties. So that the next federal convention will be composed of characters very different from the last (particularly no lawyers) and the members no doubt be tyed down to certain bounds and rules, and if any shall again turn out rogues, conspiring against the liberties of the people, their heads may feel the stroke of the sharp ax, and thus suffer as many a dignified rascal in England has for like offences. . . .

1. Reprinted: *New York Journal*, 21 January; Boston *American Herald*, 3 March. For the entire essay, see RCS:Pa. Supplement, 800–804.

Philadelphia Freeman's Journal, 16 January 1788

A correspondent observes, that if the men who call themselves Federalists, have any pretensions to that epithet, or any real regard for their country, they will immediately drop all proceedings in favour of

the proposed constitution, and use their endeavours to have a new Federal Convention called immediately, either to amend the old articles of confederation, or to frame a more popular and free constitution than the present one. This is the only way they have left to shew their patriotism, if they have any; for, should they persist in attempting to force it on the people, the peace of the country must inevitably be destroyed; for which let these men answer the consequences. As for the opposition ceasing, should nine states come into the measure, it is a mere finesse: To suppose that freemen should tamely give up their liberties, is a thing chimerical altogether. The very supposition is a most egregious insult to the understanding of a freeman. So that the only rational and safe path to be pursued, by the *well born*, is to tack about, and join the real friends of liberty, otherwise their persons may fall a forfeiture to their own domineering insolence; and become the expiation of their conspiracy against the liberties of their country.

Philanthropos
Pennsylvania Gazette, 16 January 1788

"Philanthropos," which was also printed with minor variations in the Philadelphia *Independent Gazetteer* on 16 January, was written by Tench Coxe. The essay compares the different objections to the Constitution expressed by George Mason, Elbridge Gerry, the minority of the Pennsylvania Convention, and Edmund Randolph (BoR, II, 28–31, 50–52, 197–203n, 211–16). On the day that the essay was printed, Coxe wrote James Madison: "Enclosed is a little paper the republication of wch. may possibly be useful in New York." On 20 January Madison replied that "The little piece by Philanthropos is well calculated, and will be reprinted here. I do not know a better mode of serving the federal cause at this moment than to display the disagreement of those who make a common cause agst. the Constitution. It must produce the best affects on all who seriously wish a good general Government." Madison wrote Edmund Randolph on 27 January that he had seen "Philanthropos," but he did not identify Coxe as the author (Rutland, *Madison*, X, 375, 433; XII, 480–81).

On 21 January "Philanthropos" was reprinted in the *New York Morning Post*. Two days later the New York *Daily Advertiser* also reprinted the essay. By 10 March it was reprinted eight more times: N.H. (1), Mass. (2), Conn. (3), Va. (1), S.C. (1).

A draft of "Philanthropos" in Coxe's handwriting is in the Tench Coxe Papers, Series III, Essays, Addresses, and Resource Material, in the Historical Society of Pennsylvania. There are no significant differences between the printed and final draft versions.

To the People *of the* United States.

When we observe how much the several gentlemen of the late Convention, who declined to sign the fœderal constitution, *differ* in *their*

ground of opposition, we must see how improbable it is, that another convention would unite in the same degree in any plan. Col. Mason and Mr. Gerry complain of the want of a bill of rights; Governor Randolph does not even mention it as desirable, much less as necessary. Col. Mason objects to the powers of Congress to raise an army; Governor Randolph and Mr. Gerry make no objections on this point, but the former seems to think a militia an inconvenient and uncertain dependence, which is contrary to our opinions in Pennsylvania. Mr. Randolph gives up the objection against the power of Congress to regulate trade by a majority; Mr. Mason complains of this, and says the objection is insuperable; Mr. Gerry does not say a word against it. Mr. Randolph wishes the President ineligible after a given number of years; Mr. Mason and Mr. Gerry do not make this one of their objections. Mr. Randolph objects to some ambiguities; Mr. Mason does not. Col. Mason objects to the slave trade on the principles of policy merely; Mr. Gerry and Mr. Randolph make no such objections. Mr. Mason objects to the power of the President to pardon for treason; Mr. Gerry makes no such objection, and Mr. Randolph wishes, only, that the offender may be *convicted* before the President shall have power to *pardon!* This appears to be a legal solecism. Mr. Randolph objects to the power of Congress to determine their wages (the privilege of every legislature in the union); but Mr. Gerry and Col. Mason do not object to this power. Mr. Randolph objects to the President's power of appointing the judges; Mr. Gerry and Col. Mason do not. Mr. Gerry says the people have no security for the right of election; Col. Mason and Mr. Randolph do not make this objection. Mr. Gerry and Mr. Mason think the representation not duly provided for; Mr. Randolph expresses no such idea. Mr. Mason objects to the want of security for the common law, to the power of the senate to alter money bills, to originate applications of money, to regulate the officers salaries, to the want of a privy Council, to the Vice-President, to the want of a clause concerning the press, and to the want of power in the states to lay imposts on exports; not one of which are stated as objections by Mr. Randolph or Mr. Gerry. Mr. Randolph objects to the want of a proper court of impeachment for senators (tho' the state courts of impeachment can always take cognizance of them); Mr. Gerry and Col. Mason do not hold this exceptionable. Col. Mason objects to the states, or Congress, being restrained from passing *ex post facto* laws; Mr. Randolph and Mr. Gerry do not.

The minority of the Pennsylvania convention, on the other hand, differ from all these gentlemen. They say, the defects of the old confederation were not discovered till after the peace; while Mr. Randolph

says, the short period between the ratification of the old constitution and the peace was distinguished by *melancholy testimonies* of its defects and faults. The Minority object, because some of the persons appointed by Pennsylvania have disapproved of our state constitution, which differs from those of eleven states in the union in the want of *a division* of the legislature, and in having *nineteen* persons to execute the office of governor, whose number will be increased by the addition of one more for every new county.

The Minority object to the *latitude* taken by the convention; we find no such objection made by Mr. Randolph, Mr. Gerry or Col. Mason. Mr. Gerry says, in his letter, it was *necessary*; and Mr. Mason insisted strongly in the house, that the convention could not do their business, unless they considered and recommended *every thing* that concerned the interests of the United States, tho' the strict letter of their powers was supposed by some not to extend so far. The Minority say, religious liberty is not duly secured; which is omitted as an objection by all of the three gentlemen above named. The right of the people to fish, fowl and hunt, the freedom of speech, provision against disarming the people, a declaration of the subordination of the military to the civil power, annual elections of the representatives, and the organization and call of the militia, are considered by the Minority of our convention, as on an exceptionable footing; but none of these are even mentioned by Governor Randolph, Mr. Mason or Mr. Gerry. The Minority desire a declaration, that such powers as are not expressly given shall be considered as retained; Mr. Randolph thinks this unnecessary, for that the states retain every thing they do not grant. Mr. Gerry is silent on this head. The Minority desire a constitutional Council for the President; Mr. Gerry and Mr. Randolph do not. The Minority except against powers to erect a court of equity being vested in the fœderal government; to which neither of the above gentlemen express any dislike. The minority desire a bill of rights, and object to the smallness of the representation; which Mr. Randolph does not. They object to the term of duration of the legislature; which none of the above gentlemen find fault with. Nor does the account of particulars end here. The objections severally made by the three honorable gentlemen and the Pennsylvania Minority are so *different*, and even *discordant* in their essential principles, that all hope of greater unanimity of opinion, either in *another convention*, or in *the people*, must be given up by those who know the human heart and mind, with their infinitely varying feelings and ideas.

January 15, 1788.

Brutus IX

New York Journal, 17 January 1788 (excerpt)[1]

The design of civil government is to protect the rights and promote the happiness of the people.

For this end, rulers are invested with powers. But we cannot from hence justly infer that these powers should be unlimited. There are certain rights which mankind possess, over which government ought not to have any controul, because it is not necessary they should, in order to attain the end of its institution. There are certain things which rulers should be absolutely prohibited from doing, because, if they should do them, they would work an injury, not a benefit to the people. Upon the same principles of reasoning, if the exercise of a power, is found generally or in most cases to operate to the injury of the community, the legislature should be restricted in the exercise of that power, so as to guard, as much as possible, against the danger. These principles seem to be the evident dictates of common sense, and what ought to give sanction to them in the minds of every American, they are the great principles of the late revolution, and those which governed the framers of all our state constitutions. Hence we find, that all the state constitutions, contain either formal bills of rights, which set bounds to the powers of the legislature, or have restrictions for the same purpose in the body of the constitutions. Some of our new political Doctors, indeed, reject the idea of the necessity, or propriety of such restrictions in any elective government, but especially in the general one.

But it is evident, that the framers of this new system were of a contrary opinion, because they have prohibited the general government, the exercise of some powers, and restricted them in that of others.

I shall adduce two instances, which will serve to illustrate my meaning, as well as to confirm the truth of the preceding remark.

In the 9th section, it is declared, ''no bill of attainder shall be passed.'' This clause takes from the legislature all power to declare a particular person guilty of a crime by law. It is proper the legislature should be deprived of the exercise of this power, because it seldom is exercised to the benefit of the community, but generally to its injury.

In the same section it is provided, that ''the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion and invasion, the public safety may require it.'' This clause limits the power of the legislature to deprive a citizen of the right of habeas corpus, to particular cases viz. those of rebellion and invasion; the rea-

son is plain, because in no other cases can this power be exercised for the general good.

Let us apply these remarks to the case of standing armies in times of peace. If they generally prove the destruction of the happiness and liberty of the people, the legislature ought not to have power to keep them up, or if they had, this power should be so restricted, as to secure the people against the danger arising from the exercise of it. . . .

1. Reprinted: Philadelphia *Freeman's Journal*, 23 January. The Boston *American Herald* reprinted excerpts of about two-thirds of the essay on 4 February and promised to continue its publication, but never did. For the entire essay, see CC:455. For the authorship and impact of "Brutus," see CC:178.

The South Carolina House of Representatives and a Bill of Rights, 18 January 1788

The two speeches here were transcribed from the Charleston *City Gazette*, 1 February 1788, and reprinted in the Providence, R.I., *United States Chronicle*, 21 February; *Massachusetts Gazette*, 26 February; and Boston *American Herald*, 28 February.

James Lincoln: Speech in the South Carolina House of Representatives, 18 January 1788 (excerpt)

. . . Why was not this constitution ushered in with a bill of rights? are the people to have no rights? Perhaps this same president and senate would by and by declare them, he much feared they would. He concluded, by returning his hearty thanks to the gentleman [Patrick Calhoun] who had so ably opposed this constitution—it was supporting the cause of the people, and if ever any one deserved the title of *Man of the People*, he on this occasion most certainly did.

Charles Cotesworth Pinckney: Speech in the South Carolina House of Representatives, 18 January 1788 (excerpts)

General Pinckney answered Mr. Lincoln and Mr. Calhoun on their objections, that the new government possessed no power of interference in religion; that a bill of rights and the freedom of the press were under consideration of the convention, but such danger appeared from an improper enumeration of rights and privileges, that it was considered better to leave untouched those points, which were, in fact ascertained by the state constitutions. . . .

. . . With regard to the liberty of the press, the discussion of that matter was not forgot by the members of the convention; it was fully

debated, and the impropriety of saying any thing about it in the constitution clearly evinced. The general government has no powers but what are expressly granted to it; it therefore has no power to take away the liberty of the press;—that invaluable blessing which deserves all the encomiums the gentleman has justly bestowed upon it, is secured by all our state constitutions, and to have mentioned it in our general constitution would perhaps furnish an argument hereafter that the general government had a right to exercise powers not expressly delegated to it. For the same reason we had no bill of rights inserted in our constitution, for as we might perhaps have omitted the enumeration of some of our rights, it might hereafter be said we had delegated to the general government a power to take away such of our rights as we had not enumerated; but by delegating express powers we certainly reserve to ourselves every power and right not mentioned in the constitution. Another reason weighed particularly with the members from this state against the insertion of a bill of rights, such bills generally begin with declaring, that all men are by nature born free, now we should make that declaration with a very bad grace, when a large part of our property consists in men who are actually born slaves. As to the clause guaranteeing to each state a republican form of government being inserted near the end of the constitution, the General observed, that it was as binding as if it had been inserted in the first article—the constitution takes its effect from the ratification, and every part of it is to be ratified at the same time, and not one clause before the other; but he thought there was a peculiar propriety in inserting it where it was, as it was necessary, to form the government, before that government could guarantee any thing.

Alfredus

Exeter, N.H., Freeman's Oracle, 18 January 1788

This first essay by "Alfredus" responds to arguments made in the first essay by "A Farmer" that appeared in the Exeter *Freeman's Oracle* on 11 January (BoR, II, 248–52). Each essayist responded to the other several times until they both lapsed into personal invective and scurrility. Samuel Tenney wrote the "Alfredus" essays.

The 18 January essay by "Alfredus" printed here contains a unique argument defending the lack of a bill of rights in the Constitution. "Alfredus" begins by saying that the Constitution gives Congress only delegated powers, stating that all other powers are expressly reserved to the states. Then he refers to the clause in which the Constitution guarantees to each state a republican form of government. According to "Alfredus," these two provisions guarantee the security of those bills of rights that preface state constitutions as if they "had been expressly mentioned" in the federal Constitution. "A Farmer's"

response to "Alfredus" does not mention this theory even though "A Farmer," in his first essay, did allude to the supremacy clause. "Alfredus' " unique interpretation could have been refuted by referring to the supremacy clause.

Messieurs PRINTERS, In your Oracle of the 11th current I observed an address to the Farmers of the State, by one who pretends to belong to that respectable class of citizens. Whether he does or not is of no consequence. In this address he labors hard to tincture the public mind with jealousies and prejudices against the new Constitution. Having possessed himself of that wretched hobby horse, a Bill of Rights, which has been bestridden by every antifederal scribbler thro' the United States, till he is jaded into a perfect hack equally unfit for service and shew, he has mounted him, armed *cap-a-pee*[1] with Federal courts, trial by Jury, liberty of the Press, Standing armies, &c. &c. &c. Thus accoutred and mounted and perfectly resembling Don Quixote and Rosinante[2] in their memorable attack on the Wind-Mill, he sallies out against the new Constitution, calling on his brethren to witness his amazing prowess and address in the dangerous conflict. But the patrons of this admirable system of federal government need be under no apprehensions for its fate in this expedition. Whatever may be the valor of the Rider, the steed has no mettle and will certainly fail him in the terrible onset. For a proof of this I shall insert in this address the Speech of Mr. WILSON in the Pennsylvania Convention on the subject of a Bill of Rights, by which it will appear that it is not only *unnecessary* in the new Constitution, but would be *impractable* and *dangerous*. The substance of this speech is as follows.

[The text of Wilson's speech of 28 November quoted here has been enclosed by angle brackets on BoR, II, 154–55, 155–56.]

To these reasonings of Mr. Wilson it may be added that the Constitution for the United-States and a constitution for an individual State are essentially different. When we framed our State Constitution we were in a state of Nature, possessing individually all the rights privileges and immunities that belong to men before they enter into political society. The question was which of those we should retain. The Bill of Rights prefixed to our constitution innumerated and defined them.[3] The rest were given up. But to whom were they resigned? Not to a sovereign power independent of our controul, but to each other. It was a social compact between individuals possessed of equal power and authority, in which every thing that was not expressly reserved and guaranteed to individuals was resigned to the direction of the majority. The Constitution now before the public is not a compact between individuals, but between several sovereign and independent political societies already formed and organized. These societies have *general* and

particular interests and concerns. Those which respect the whole are submitted to the direction of the federal government; while those which respect individual states only are left, as they ought to be, in the hands of the state assemblies. To prevent any interference between the federal and state governments, the objects of the former are pointed out in the preamble to the Constitution, viz. "*To form a more perfect union—establish justice—insure domestic tranquility—provide for the common defence—promote the general welfare—and secure the blessings of liberty to ourselves and posterity.*" These objects are all national and important. The powers vested in the supreme authority for the accomplishment of these purposes are accurately defined in the 8th section of the first article, and limited in the section following. It must therefore be taken for granted that every thing not expressly given up is retained by the states. If this is not enough to secure the liberties of the subject. *The United States guarantee to each separate state a republican form of government.*[4] Of these, the Bill of Rights, where they have any prefixed, is an essential part; of consequence the Bill of Rights is as effectually secured by the Constitution proposed as if it had been expressly mentioned.—What can the most suspicious patriot want further? The Farmer himself acknowledges that he is silenced by Mr. Wilson's arguments in favour of the omission—tho' he pretends not to be convinced. Perhaps a man of more candor than he appears to be would have been perfectly satisfied. The clause in the constitution which he recites to prove the necessity of a Bill of Rights is very little to his purpose, even in appearance, and in reality still less.[5]—By this Constitution the Congress of the United States will be invested with several powers, which now belong only to individual states. For the exercise of these powers laws must necessarily be enacted. They must also be the supreme law of the land, otherwise they would be useless and insignificant. Now it is evident that, although these laws may apparently clash with the Constitutions of the several states as they at present stand, yet they will be perfectly consistent with the exercise of all the powers the states still retain; because they will be founded on those rights which they have voluntarily divested themselves of and placed in the hands of the United States.

The Bill of Rights being the Burden of the Farmer's song; and it having been clearly shewn that those of the several states are confirmed and guaranteed to them by the new Constitution, I might here terminate my strictures on the publication. But there are several other things calculated to mislead the class of men to whom they are addressed and therefore deserve a few remarks by way of reply. Among these his hints concerning the *Federal Courts* first present themselves. Of these courts,

especially after Congress have mounted their hobby horse of a federal jurisdiction over a certain district of country,[6] he has the most fearful apprehensions, except this horse is well *guarded and fettered*. But whence can these apprehensions arise in this gentleman's mind? Certainly no good member of society can have any grounds to fear passing through, or residing within the jurisdiction of those rulers whom he has had a hand in appointing, and who are accountable to him for the use they make of their delegated authority. Good laws and magistrates are a terror to evil doers; but those who do well may ever expect from them both protection and praise.[7] An honest man therefore can never be in danger from legal authority, whether established by a single state or thirteen combined.

The Farmer thinks a Trial by Jury is indispensably necessary to the security of the liberties of the people. A person who had never read the new constitution would suppose that this institution was to be entirely abolished in the federal courts. But how would he be surprized to find that the "Trial of all crimes except in cases of impeachment, shall be by jury?"[8] Life and Liberty are therefore as well secured by the federal Constitution as by those of the several states: for in cases of impeachment juries have never been employed. But who has informed this writer that any causes shall be tried in the federal courts without jury? The constitution does not prescribe it, but leaves it to the direction of Congress.

But after all, what are the advantages of this boasted *trial by Jury*, and on which side do they lie? Not certainly on the side of *justice:* for one unprincipled juror secured in the interest of the opposite party will frequently divert her from her course. And I believe every gentleman much acquainted in our judicial courts will agree in sentiment with me that in four cases out of five, where injustice is done, it is by the ignorance or knavery of the jury, in opposition to the opinion of the Judges. The fact is that under the present regulation, which most unreasonably (at least in civil cases) requires an unanimity in the verdict, juries favor the guilty much more than the innocent party. It is therefore no wonder that certain characters, in this as well as in other States shudder at the idea of courts in which justice will more generally take place. Let those who for sake of the wages, love and practice the *works of unrighteousness*, clamour at such an establishment: Honest men will justify & applaud it. Laws were made and judicatories established for the punishment of the former, and the security of the latter. Upon their faithful execution greatly depends the happiness of society: and however the vicious and disorderly may fare, the virtuous and honest can

never suffer by them except when they permit *violence, injustice* and *fraud* to escape with impunity.

The next engine the Farmer brings into play to alarm the fears of the people is that hedious Bug-bear, a *standing army in time of peace*. This he and some others would represent as a monster ever possessed both of the will and power to swallow up the liberties of the country at a meal. But let us for a moment enquire into the idea of a standing army, and ask what it is? Certainly not an army voted, raised and supported by the people. Such an army *stands* no longer than the people direct. The same voice that gave it being last year may now annihilate it.— How then can it be called a *standing army*? In fact, a free government knows no such thing, nor can it: and the writer who endeavors to excite jealousies against the new Constitution in the minds of the good citizens of the United States, by representing that it licences standing armies in times of peace, is either grossly ignorant or scandalously dishonest. A standing army is that which the supreme executive magistrate can raise by his own authority and support by permanent revenues placed beyond the controul of his subjects. It is against standing armies thus circumstanced that so much reasoning and declamation have been levelled, and not against such bodies of men as may be necessary for the protection of a state, and under the direction of its legislature. Such an army, it must be confessed is a most dangerous instrument in the hands of arbitrary power, and too much cannot be said against it: But when I hear a man of the least knowledge in such matters expressing his apprehensions of danger to the liberties of America from that quarter, under the new constitution without a Bill of Rights, I cannot help considering him as an unhappy HYPOCHONDRIAC, whose fears must be calmed by medicine rather than by argumentation.

To trace this writer, Messieurs Printers, thro' all his ramblings from the point, and to make a reply to every scandalous innuendo, foolish proposition, impertinent observation, and groundless assertion, would equally fatigue the patience and insult the understandings of your readers. I shall therefore conclude with this remark on his observation in the last sentence of his address elegantly introduced by the *fox* and the *hen-roost*, that however cautious we ought to be in our choice of public officers, when we have got the most patriotic virtuous and enlightened characters we can find, they ought never to be degraded by mean jealousies and groundless distrusts, but to be honored with our full confidence; because by such jealousies and distrusts we should in some measure authorize them to betray their trust: as many a husband has procured a growth of horns on his front by unjustly calling in question the fidelity of his Wife.

1. French: From head to foot.
2. Don Quixote's horse.
3. The 1784 New Hampshire Declaration of Rights contained thirty-eight numbered rights (BoR, I, 81–86).
4. Article IV, section 4.
5. The supremacy clause, Article VI, paragraph 2.
6. "Alfredus" is referring to the federal capital.
7. Romans 13:13.
8. Article III, section 2.

An Independent Freeholder
Winchester Virginia Gazette, 18 January 1788 (excerpts)

This essay, the conclusion of which appeared in the *Gazette* on 25 January, was perhaps written by Alexander White of Frederick County. (See Alexander White, Winchester *Virginia Gazette*, 22 February, BoR, II, 331–35.) For the entire essay and conclusion, see RCS:Va., 310–13, 325–29.

To the CITIZENS of VIRGINIA.

Friends and Countrymen, I shall make no apology for intruding my thoughts on a subject which ought to engage the attention of every American, I mean the Constitution proposed by the late Federal Convention. To this plan many objections have been made. I shall take more particular notice of those published in the *Winchester Gazette* of sixteenth and twenty-third November last, said to be Observations by R. H. L. Esquire, and Objections by Colonel M——n;[1] and here I shall not attempt to prove that the Constitution would be inadmissible with their amendments, or absolutely to pronounce that it might not have been improved by the adoption of some of them, to determine this point it would be necessary to see the whole scheme when new modelled so as to receive the amendments, for however pleasing to the people an amendment might be, as a detached sentiment, we cannot otherwise know how it would accord with a plan of Continental Government—having built a convenient dwelling house in a plain style, I would not thank the ablest architect to introduce an highly ornamented Corinthian pillar as one of the supporters of my piazza. *A Bill of Rights* has a pleasing sound, and in some instances has been deemed necessary, but on occasions very different from the present. When by the abdication of James IId. there was a suspension of Regal Government in England, the two houses of Parliament, accompanied the solemn tender of the Crown, which they made to William and Mary, with a Bill of Rights, stating certain acts, which the King, who has the executive powers of government, and is one branch of the legislature, should not do, without the consent of the other two branches the Lords and Commons; but it never entered into the minds of the people of

England to declare a Bill of Rights restrictive of the powers of the whole legislative body, tho' they have the choice of one branch only, the other two holding their seats by hereditary right, and one of them claiming by divine. At the American Revolution there was not only an end to the power of the crown, but a total dissolution of government; the people were reduced to a state of nature, under these circumstances several of the states conceived it necessary, previous to granting legislative powers, to declare that certain rights were inherent in the people, and to reserve those rights out of the grant. But is America in the situation Great Britain was in at the time of the revolution in that country, or in which she herself was at the time of the revolution in this? Nothing can be more remote; here is neither a total nor partial dissolution of Government; our social compacts and all our ancient rights remain entire, except such as are expressly granted to Congress. And this affords an answer to many objections, such as that religious liberty, the Freedom of the Press, the right of Petitioning the Legislature, &c. &c. &c. are not secured; no power over these matters being granted to Congress, she never can interpose to destroy them. Much more safely may we rest the Constitution on this ground than on a bill of rights, in that case all powers would be considered as granted which were not expressly reserved, it would not only be incongruous but dangerous, and might tend to sap the foundation of the whole structure. We have not been able to divest ourselves of our early ideas. We have been taught from our infancy to regard those men who opposed the arbitrary exertions of royal power in England as patriots and heroes, and without adverting to the difference of circumstances, conceive, that it is equally meritorious to clog the wheels of government in this country, to circumscribe the legislature, though constituted and chosen by ourselves as narrowly as the people of England have circumscribed the power of their kings. Yet it appears to me incompatible with the nature of government, that the supreme power in a nation should be restrained from raising an army, or doing any other act which may be necessary for the defence or security of the state, by any other means than the wisdom of the rulers and their regard to the public good, and we have no reason to doubt, from the mode of choosing the members of Congress, but that both these principles will act with full force under the proposed government, I believe such restraint has never been attempted. In England the keeping up standing armies in time of peace was opposed only when it was done by the sole authority of the crown. In this country we complained when troops were stationed among us *without the consent of our Assemblies*. . . . Trial by jury in all criminal cases is expressly secured, and that the trial shall be in the state where the

crime is committed. Can you expect that the number of courts and the times and places of holding them through all future ages should be ascertained? What would you have done in such an instrument of government with regard to civil causes? Would you say the trial by jury shall be in all cases? Is the court of chancery an institution to be abolished? Are you displeased with the mode of proceeding against sheriffs by motion, and in various other cases in which the legislature of this state has found it necessary to dispense with the trial by jury? And may not cases equally necessary happen under the continental government?

(*To be concluded in our next.*)

1. See "Richard Henry Lee's Proposed Amendments," 27 September, and "George Mason: Objections to the Constitution," 7 October (BoR, II, 5–12n, 28–31).

An Honest American

Philadelphia Independent Gazetteer, 19 January 1788 (excerpt)[1]

TO CONCILIATOR

. . . However, in your great goodness, you consent to the gratification of the people's *prejudices* in favor of a bill of rights; but insist that we should leave this matter to our new rulers themselves. Yes, yes, let them once be fully invested with the extensive powers which this constitution gives them, and there is no doubt that they will soon be satiated, and of their own accord propose an abridgement; Do you really think this probable, sir? How many examples can you aduce from history to justify this supposition? But it seems, if we should even call a second general convention, there is no probability that they could amend the constitution in question. This is truly strange. When the convention met at Philadelphia, they could have had little or no idea of the business they afterwards undertook. They could not possibly have had any adequate instructions on the subject from their constituents. They were appointed for other purposes. And even after they had, of their own free will and good pleasure, engaged in the business of framing a new form of government, all the avenues of information between them and the people were effectually stopt. In these circumstances, is it likely that they should, in the very first essay, form a constitution incapable of amendment, and in which the people, whose opinions had never been consulted, should most generally concur?

In acts of infinitely less importance, even a law for laying out a new road, much more deliberation is thought to be necessary. In Pennsylvania, the bill, after going through the common forms, in open assembly, must before it can pass into a law, be published for consideration,

and lie open for alterations and amendments, till the next session of the house; and in several of the other states still greater caution, and more checks and guards are used to prevent precipitancy in the enacting of laws; which, however, at the worst, may be amended or repealed at the next session of the legislature. It cannot certainly, then, be thought superfluous to use equal deliberation and care in the all-important business of constituting a frame of general government, on which the happiness or misery of millions, for ages, will depend; and which, it is more than probable, if once established, will never afterwards be altered for the better.

1. For the entire piece, see RCS:Pa. Supplement, 807–10. The essay responds to "Conciliator," Philadelphia *Independent Gazetteer*, 9 January (BoR, II, 243–45n).

Verus Conciliator
Philadelphia Independent Gazetteer, 19 January 1788

Conciliator,[1] in your paper of this day, says, he shudders at the thoughts of calling another federal convention. Why so? Because anarchy or something worse might be the consequence. I would wish to inform that gentleman, if he desires that his conduct should quadrate with his assumed signature; that the only probable way of preventing these evils, he dreads, is to call another federal convention immediately, either to form a new constitution on the principles of the revolution, or to amend the proposed one in such a manner as to make it acceptable. If that writer really intends to reconcile the parties, he will therefore recommend it to the friends of the proposed constitution to use their influence to have another convention; because the opposition will in that case subside; but obstinacy, in pushing on the present one, will undoubtedly involve this devoted country in ruin, and in all the horrors of a civil war. Which Heaven avert!

January 15, 1788.

1. For "Conciliator," Philadelphia *Independent Gazetteer*, 15 January, see BoR, II, 243–45n.

Junius
Massachusetts Gazette, 22 January 1788 (excerpt)[1]

To AGRIPPA.

SIR, The obvious falshoods, the complicated nonsense, and the unsystematical procedure with which your productions abound, has, without doubt, been the only reason why scarce a single pen has been seriously employed to notice you. You have indeed often been placed

in a contemptible light, but in a humorous style; few of your absurd assertions, however, have claimed publick remark: this perhaps has stimulated you to persevere in a line of conduct which has already cast a shade upon the once unsullied brightness of your character, and placed you in a sphere which, unless you have entirely divested yourself of those feelings which constitute an essential part of the character of a gentleman, must be exceedingly mortifying to you.

It is not my present intention to enter into a particular detail and refutation of your arguments (if, without deviating from the rules of common sense, they can be styled arguments) I mean barely to notice a few of the most glaring of your mistakes (to be soft in the term) and absurdities, and leave the rest to sink with their author to the dreary shades of oblivion.

In your production in the Massachusetts Gazette of the 14th instant, you say, that in the new constitution there is no bill of rights, and consequently a continental law may controul any of those principles we at present consider as sacred. Pray sir, what authority have you for this assertion? Is not the constitution itself a bill of rights, and are not the powers granted, properly defined? You say, however, that it is mere fallacy, invented by the deceptive powers of mr. Wilson, that what rights are not given are reserved.[2] Give me leave to tell you, sir, that any assertion to the contrary of what mr. Wilson says, in the particular referred to, must be founded in the grossest ignorance. For what right has any man, or body of men, to exercise a power that is not vested in them? Can you have the presumption to suppose that you can force a belief on the minds of the enlightened citizens of Massachusetts, that the new Congress have all power granted to them by the constitution, and that the rights and property of the subject is not sufficiently secured? If you can presume this, sir, your assurance is much greater than your boasted knowledge.

You say in the same publication, that the right to try causes between a state and citizens of another state, involves in it all criminal causes; and a man who has accidentally transgressed the laws of another state, must be transported, with all his witnesses, to a third state to be tried. This assertion has nothing but your bare word to support it. The constitution says, as plain as words can express it, that the trial of all crimes, except in cases of impeachment, shall be by jury, and the trial shall be in the state where the crime shall have been committed. If you have not published a gross falshood, in respect to that part of the constitution just mentioned, then the most adverse things in creation are congenial in their natures. . . .

1. For the entire first part of this essay, see RCS:Mass., 776–78. For the second part of this essay, see "Junius," *Massachusetts Gazette*, 25 January (RCS:Mass., 799–802n).

2. See "Agrippa" XII, *Massachusetts Gazette*, 15 January, at note 2 (BoR, II, 256). This issue of the *Gazette* was misdated 14 January.

Silas Lee to George Thatcher
Biddeford, Maine, 23 January 1788 (excerpt)[1]

. . . You ask, "what are the objections I have to the plan"?—Some, I will confess—but the want of a Bill of Rights is not one of them—that, I dont think would by any means be of any service to the people—nay I am in doubt whether such a Bill would not of itself make the Constitution far more dangerous than it now is—unless it curtailed some of the powers already proposed to be given, which would be children's play indeed—like a man's taking a note of hand, & then instantly giving a Receipt not only sufficient but on purpose to cut & defray it—a Bill of Rights, (in My opinion) would give up the controlment at least of every right not particularly secured therein—& therefore unless it mentioned & particularly secured every right not expressly granted away, instead of lessening the powers of Congress, such a Bill would actually enlarge them—for instead of the Constitution's being the limits or boundary line of Congress, the Bill of Rights only would be the sacred barrier, or mark not to be exceeded. . . .

1. RC, Chamberlain Collection, Thatcher Papers, MB. For the entire letter, see RCS: Mass., 780–84n. Two days after completing his letter, Lee continued writing to Thatcher on the same page. The continuation is dated "Friday 25 Jany." A "P.S." on the last page stated: "I shall not insist upon your reading this letter."

John Adams to Cotton Tufts
Grosvenor Square, London, 23 January 1788[1]

So many Things appear to be done, when one is making Preparations for a Voyage, especially with a Family, that you must put up with a short Letter in answer to yours.

We shall embark in March on board of the ship Lucretia Captn Calahan, and arrive in Boston as soon as We can:[2] till which time I must suspend all Requests respecting, my little affairs. Your Bills shall be honoured as they appear.

You are pleased to ask my poor opinion of the new Constitution, and I have no hesitation to give it. I am much Mortified at the Mixture of Legislative and Executive Powers in the Senate, and wish for Some other Amendments.—But I am clear for accepting the present Plan as

it is and trying the Experiment, at a future Time Amendments may be made, but a new Convention at present, would not be likely to amend it. You will receive, perhaps with this, a third Volume of my Defence, in which I have spoken of the new Constitution, in a few Words.[3] This closes the Work, and I believe you will think I have been very busy. I have rescued from everlasting oblivion, a number of Constitutions and Histories, which, if I had not submitted to the Drudgery, would never have appeared in the English Language. They are the best Models for Americans to Study, in order to Show them the horrid Precipice that lies before them in order to enable and Stimulate them to avoid it.

I am afraid, from what I See in the P[apers?] that Mr Adams[4] is against the new Plan, if he is, he will draw many good Men after him, and I Suppose place himself at the head of an opposition. This may do no harm in the End: but I should be Sorry to See him, worried in his old Age.

Of Mr Gerrys Abilities, Integrity and Firmness I have ever entertained A very good opinion and on very solid Grounds.—I have seen him and Served with him, in dangerous times and intricate Conjunctures. But on this occasion, tho his Integrity must be respected by all Men, I think him out in his Judgment.—Be so kind as to send him in my name a Set of my three Volumes.

1. RC, Montague Collection, NN. Adams answered Tufts's letter of 28 November (RCS: Mass., 326–27).

2. Adams and his wife Abigail arrived in Boston on 17 June.

3. See "The Massachusetts Reprinting of the Last Letter of John Adams's *Defence of the Constitutions*," 3–13 March (RCS:Mass., 1721–24).

4. Samuel Adams.

Valerius

Virginia Independent Chronicle, 23 January 1788 (excerpt)[1]

To the Honorable RICHARD HENRY LEE, *member of Congress for the state of* VIRGINIA.

Sir, . . .

In the begining of your letter,[2] you assert, that the proposed fœderal constitution is defective; that amendments are necessary, and that to make these amendments, another convention ought to be called. Nay, you have gone fa[r]ther. To save *this convention* a great deal of deliberation and debate, and the *United States* much additional and unnecessary expence, you have graciously been pleased to point out the defects, and, without application, magisterially propose suitable amendments. What astonishing condescension! How generously patriotic! It is most

devoutly to be wished, that your grateful county would liberally reward you at *some future period*, for this unsolicited kindness, and rest assured, sir, I should not interpose to stop your exaltation.

I am not, sir, a blind and enthusiastic admirer of the new constitution. I feel myself equally removed from that *puerile* admiration, which will see no fault, and can endure no change, and that *distempered* sensibility, which is, tremblingly, alive *only* to perceptions of inconveniency. I do not believe, that the constitution is absolutely perfect; but I am sure, sir, you have not convinced that it is defective. It is from the perceptible and long observed operation; from the regular progress of cause and effect, that imperfections in free governments are to be discovered, and adequate remedies applied. It appears to my understanding, clear beyond a doubt, that experience *only* can teach us the pernicious tendency of *that* new system of government, which you, in your *political visions*, have been pleased to discover. Permit me, now, to ask you a few simple questions. Have you considered the peril, and perhaps, the impracticability of calling another convention? Do you think it possible to obtain another conventional representation, which promises to collect more wisdom, and produce firmer integrity, than the last? Have you compared the fœderal constitution, not with models of speculative perfection, but with the actual chance of obtaining a better? Are you certain, that the defects, which you have discovered, really exist, and that the amendments, which you propose, would be adopted? And, pray! sir, why might not all your *boasted* amendments be as liable to objections as the defective parts, which you have, with such peculiar sagacity discovered in the fœderal constitution? As the doctrine of infallibility is rapidly declining, even in the *papal* dominions, perhaps you intend to transplant it into the uncultivated wilds of America, or else revive it in your own person. But, believe me, sir, it will not thrive in the American soil; neither will the sanction of *your* name procure it an implicit reception among *us*. . . .

1. On 12 December the printer of the *Virginia Independent Chronicle* noted that "Valerius" "is received." A week later the printer said: "Although the writer of VALERIUS concludes with pledging his veracity as a man, that he will, if necessary, lay aside his questionable shape, assume a visible existence, and give his name to the public with as little reserve as he there gives his opinions; but as he has not favored the printer with his real name, and his reflections are so pointed and personal, an interview with the author is requested before the piece can be published." For the entire essay, see RCS:Va., 313–20n.

2. For Lee's amendments presented to Congress in September 1787, see BoR, I, 145–48. For Lee's letter to Governor Edmund Randolph of 16 October 1787, see BoR, II, 5–12n.

The Massachusetts Convention and a Bill of Rights 23 January–5 February 1788

The speeches (except when otherwise noted) are transcribed from the printed volume *Debates, Resolutions and Other Proceedings, of the Convention of the Commonwealth of Massachusetts* (Boston, 1788) (Evans 21242).

Joseph Bradley Varnum: Speech in the Massachusetts Convention 23 January 1788

Colonel VARNUM, in answer to an inquiry, why a bill of rights was not annexed to this Constitution, said, that by the Constitution of Massachusetts, the legislature have a right to make all[1] laws not repugnant to the Constitution;[2] now, says he, if there is such a clause in the Constitution under consideration, then there would be a necessity for a bill of rights. In the sect. under debate, Congress have an expressed power to levy taxes, &c. and to pass laws to carry their requisitions into execution; this, he said, was express, and required no bill of rights. After stating the difference between delegated power—and the grant of all power, except in certain cases, the Colonel proceeded to controvert the idea, that this Constitution went to a consolidation of the union—he said it was only a consolidation of strength—and that it was apparent, Congress had no right to alter the internal regulations of a state. The design in amending the confederation, he said, was to remedy its defects. It was the interest of the whole to confederate against a foreign enemy—and each was bound to exert its utmost ability to oppose that enemy; but it had been done at our expense in a great measure—and there was no way to provide for a remedy; because Congress had not the power to call forth the resources of every state—nor to coerce delinquent states. But, under the proposed government, those states which will not comply with equal requisitions, will be coerced—and this he said, is a glorious provision. In the late war, said the Colonel, the States of New-Hampshire and Massachusetts, for two or three years, had in the field half the continental army, under General Washington. Who paid these troops? The states which raised them, were called on to pay them. How, unless Congress have a power to levy taxes, can they make the states pay their proportion? In order that this, and some other states may not again be obliged to pay eight or ten times their proportion of the publick exigencies, he said, this power is highly necessary to be delegated to the federal head. He shewed the necessity of Congress being enabled to prepare against the attacks of a foreign enemy: And he called upon the gentleman from Andover, *(Mr. Symmes)*[3]

or any other gentleman, to produce an instance, where any government, consisting of three branches, elected by the people, and having checks on each other, as this has, abused the power delegated to them.

1. The *Massachusetts Centinel*, 6 February, italicized the word "all."

2. Chapter I, section I, article IV, of the state constitution (1780) states, "And further, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof . . ." (Thorpe, III, 1894).

3. For William Symmes's speech on 22 January, see RCS:Mass., 1307–11.

Samuel Thompson: Speech in the Massachusetts Convention 23 January 1788 (excerpt)

. . . Gentlemen say this sect. [Article I, section 8] is as clear as the sun, and that all power is retained which is not given. But where is the bill of rights which shall check the power of this Congress, which shall say, *thus far shall ye come and no farther.*[1]—The safety of the people depends on a bill of rights—If we build on a sandy foundation is it likely we shall stand?[2] I apply to the feelings of the Convention. There are some parts of this Constitution which I cannot digest; and, sir, shall we swallow a large bone for the sake of a little meat? Some say, swallow the whole now, and pick out the bone afterwards. But I say, let us pick off the meat, and throw the bone away. . . .

1. Job 38:11.

2. Matthew 7:26. "And every one that heareth these sayings of mine, and doeth them not, shall be likened unto a foolish man, which built his house upon the sand."

James Bowdoin: Speech in the Massachusetts Convention 23 January 1788 (excerpt)

. . . With regard to rights, the whole constitution is a declaration of rights, which primarily and principally respect the general government intended to be formed by it. The rights of particular states and private citizens not being the object or subject of the Constitution, they are only incidentally mentioned. In regard to the former, it would require a volume to describe them, as they extend to every subject of legislation, not included in the powers vested in Congress: and in regard to the latter, as all government is founded on the relinquishment of personal rights in a certain degree, there was a clear impropriety in being very particular about them. By such a particularity the government

might be embarrassed, and prevented from doing what the private, as well as the publick and general good of the citizens and states might require.

The publick good, in which private is necessarily involved, might be hurt by too particular an enumeration; and the private good could suffer no injury from a deficient enumeration, because Congress could not injure the rights of private citizens without injuring their own; as they must in their publick as well as private character, participate equally with others in the consequences of their own acts. And by this most important circumstance, in connection with the checks abovementioned, the several states at large, and each citizen in particular, will be secured, as far as human wisdom can secure them, against the abuse of the delegated power.

In considering the Constitution, we shall consider it in all its parts, upon these general principles, which operate through the whole of it, and are equivalent to the most extensive bill of rights that can be formed.

These observations, which are principally of a general nature, but will apply to the most essential parts of the Constitution, are, with the utmost deference and respect, submitted to your candid consideration: with the hope, that as they have influenced my own mind, decidedly in favour of the Constitution, they will not be wholly unproductive of a like influence on the minds of the gentlemen of the Convention.

If the Constitution should be finally accepted and established, it will complete the temple of American liberty: and like the key stone of a grand and magnificent arch, be the bond of union to keep all the parts firm, and compacted together. May this temple, sacred to liberty and virtue—sacred to justice, the first and greatest political virtue, and built upon the broad and solid foundation of perfect union, be dissoluble only by the dissolution of nature: And may this Convention have the distinguished honour of erecting one of its pillars on that lasting foundation.

Theophilus Parsons: Speech in the Massachusetts Convention 23 January 1788 (excerpt)

. . . It has been objected that we have no bill of rights. If gentlemen who make this objection, would consider what are the supposed inconveniences resulting from the want of a declaration of rights, I think they would soon satisfy themselves that the objection has no weight. Is there a single natural right we enjoy, uncontrouled by our own legislature, that Congress can infringe? Not one. Is there a single political

right secured to us by our constitution, against the attempts of our own legislature, which we are deprived of by this Constitution? Not one that I recollect. All the rights Congress can controul, we have surrendered to our own legislature, and the only question is, whether the people shall take from their own legislatures, a certain portion of the several sovereignties, and unite them in one head, for the more effectual securing of the national prosperity and happiness.

Abraham Holmes: Speech in the Massachusetts Convention 30 January 1788

Mr. HOLMES. Mr. President, I rise to make some remarks on the paragraph under consideration, which treats of the judiciary power.

It is a maxim universally admitted, *that the safety of the subject consists in having a right to a trial as free and impartial as the lot of humanity will admit of.*—Does the Constitution make provision for such a trial? I think not: For in a criminal process a person shall not have a right to insist on a trial in the vicinity where the fact was committed, where a jury of the peers would, from their local situation, have an opportunity to form a judgment of the *character* of the person charged with the crime, and also to judge of the *credibility* of the witnesses. There a person must be tried by a jury of strangers—a jury who *may be* interested in his conviction; and where he *may*, by reason of the distance of his residence from the place of trial, be incapable of making such a defence, as he is in justice intitled to, and which he could avail himself of, if his trial was in the same county where the crime is said to have been committed.

These circumstances, as horrid as they are, are rendered still more dark and gloomy, as there is no provision made in the Constitution to prevent the Attorney-General from filing information against any person, whether he is indicted by the grand jury or not;[1] in consequence of which the most innocent person in the Commonwealth may be taken by virtue of a warrant issued in consequence of such information, and dragged from his home, his friends, his acquaintance, and confined in prison, until the next session of the court, which has jurisdiction of the crime with which he is charged (and how frequent those sessions are to be, we are not yet informed of) and after long, tedious and painful imprisonment, though acquit[t]ed on trial, may have no possibility to obtain any kind of satisfaction for the loss of his liberty, the loss of his time, great expenses and perhaps cruel sufferings.

But what makes the matter still more alarming is that as the mode of criminal process is to be pointed out by Congress, and they have no constitutional check on them, except that the trial is to be by a *jury*,

but who this jury is to be, how qualified, where to live, how appointed, or by what rules to regulate their procedure, we are ignorant of as yet;—whether they are to live in the county where the trial is;—whether they are to be chosen by certain districts;—or whether they are to be appointed by the sheriff *ex officio*;—whether they are to be for one session of the Court only, or for a certain term of time, or for good behaviour, or during pleasure; are matters which we are intirely ignorant of as yet.

The mode of trial is altogether indetermined—whether the criminal is to be allowed the benefit of council; whether he is to be allowed to meet his accuser face to face: whether he is to be allowed to confront the witnesses and have the advantage of cross examination we are not yet told.

These are matters of by no means small consequence, yet we have not the smallest constitutional security, that we shall be allowed the exercise of these privileges, neither is it made certain in the Constitution, that a person charged with a crime, shall have the privileges of appearing before the court or jury which is to try them.

On the whole, when we fully consider this matter, and fully investigate the powers granted—explicitly given, and specially delegated, we shall find Congress possessed of powers enabling them to institute judicatories, little less inauspicious than a certain tribunal in Spain, which has long been the disgrace of Christendom—I mean that diabolical institution the INQUISITION.

What gives an additional glare of horrour to these gloomy circumstances, is the consideration that Congress have to ascertain, point out, and determine, what kind of punishments shall be inflicted on persons convicted of crimes; they are no where restrained from inventing the most cruel and unheard of punishments, and annexing them to crimes, and there is no constitutional check on them, but that RACKS and GIBBETS, may be amongst the most mild instruments of their discipline.

There is nothing to prevent Congress from passing laws which shall compel a man who is accused or suspected of a crime, to furnish evidence against himself, and even from establishing laws which shall order the court to take the charge exhibited against a man for truth, unless he can furnish evidence of his innocence.

I do not pretend to say Congress *will* do this, but sir, I undertake to say that Congress (according to the powers proposed to be given them by the Constitution) *may* do it; and if they do not, it will be owing *intirely*—I repeat it, it will be owing *intirely* to the GOODNESS of the

MEN, and not in the *least degree* owing to the GOODNESS of the CONSTITUTION.

The framers of our State Constitution, took particular care to prevent the General Court from authorizing the judicial authority to issue a warrant against a man for a crime, unless his being guilty of the crime was supported by oath or affirmation, prior to the warrants being granted;[2] why it should be esteemed so much more safe to intrust Congress with the power of enacting laws, which it was deemed so unsafe to intrust our state legislature with, I am unable to conceive.

1. On the matter of an attorney general bringing charges against an individual without an indictment by a grand jury, see RCS:Mass., 758, 809, 809n–10n.

2. See Article XIV of the Massachusetts Declaration of Rights (BoR, I, 78–79).

Christopher Gore: Speech in the Massachusetts Convention 30 January 1788

Mr. GORE—observed in reply to Mr. HOLMES—that it had been the uniform conduct of those in opposition to the proposed form of government, to determine, in every case where it was possible that the administrators thereof could do wrong, that they would do so, although it were demonstrable that such wrong would be against their own honour and interest, and productive of no advantage to themselves—On this principle alone have they determined that the trial by jury would be taken away in civil cases—when it had been clearly shewn, that no words could be adopted, apt to the situation and customs of each state in this particular—Jurors are differently chosen in different states, and in point of qualification the laws of the several states are very diverse—not less so, in the causes and disputes which are intitled to trial by jury—what is the result of this—that the laws of Congress may, and will be conformable to the local laws in this particular, although the Constitution could not make an universal rule equally applying to the customs and statutes of the different states—very few governments, (certainly not this) can be interested in depriving the people of trial by jury in questions of meum et tuum[1]—in criminal cases alone, are they interested to have the trial under their own controul—and in such cases the Constitution expressly stipulates for trial by jury—but then says the gentleman from Rochester *(Mr. Holmes)* to the safety of life it is indispensibly necessary the trial of crimes should be in the vicinity—and the vicinity is construed to mean county—this is very incorrect, and gentlemen will see the impropriety by referring themselves to the different local divisions and districts of the several states—but further,

said the gentlemen, the idea that the jury coming from the neighbourhood, and knowing the character and circumstances of the party in trial, is promotive of justice, on reflection will appear not founded in truth—if the jury judge from any other circumstances, but what are part of the cause in question, they are not impartial—The great object is to determine on the real merits of the cause uninfluenced by any personal considerations—if therefore the jury could be perfectly ignorant of the person in trial, a just decision would be more probable—from such motives did the wise Athenians so constitute the fam'd Areopagus,[2] that when in judgment, this court should sit at midnight and in total darkness, that the decision might be on the thing, and not on the person—further, said the gentleman, it has been said, because the constitution does not expressly provide for an indictment by grand jury in criminal cases, therefore some officer under this government will be authorized to file informations and bring any man to jeopardy of his life, and indictment by grand jury will be disused—if gentlemen who pretend such fears, will look into the constitution of Massachusetts, they will see that no provision is therein made for an indictment by grand jury, or to oppose the danger of an attorney general filing informations, yet no difficulty or danger has arisen to the people of this Commonwealth, from this defect, if gentlemen please to call it so—if gentlemen would be candid and not consider that wherever Congress may possibly abuse power, that they certainly will, there would be no difficulty in the minds of any in adopting the proposed constitution.

1. Latin: "mine and thine," a phrase used to express the rights of property.
2. The ancient Greek Council or Court of Areopagus (Council of Elders)—the guardian of the law—tried murder cases.

Thomas Dawes, Jr.: Speech in the Massachusetts Convention 30 January 1788

Mr. DAWES, said, he did not see that the right of trial by jury was taken away by the article. The word *Court* does not, either by a popular or technical construction, exclude the use of a jury to try facts.[1] When people in common language talk of a trial at the *Court* of Common Pleas, or the Supreme Judicial *Court*, do they not include all the branches and members of such court, the *jurors*, as well as the judges?—they certainly do, whether they mention the jurors expressly or not. Our State legislature have construed the word Court in the same way; for they have given appeals from a justice of peace to the *Court* of Common Pleas, and from thence to the Supreme *Court*, without saying any thing of the jury: But in cases which almost time out of mind have

been tried *without jury*, there the jurisdiction is given expressly to the *justices* of a particular court, as may be instanced by suits upon the absconding act, so called.

Gentlemen have compared the article under consideration, to that power which the British claimed, and which we resisted at the revolution—namely, the power of trying the Americans without a jury—But surely there is no parallel in the cases: It was *criminal* cases in which they attempted to make this abuse of power. Mr. D. mentioned one example of this, which, though young, he well remembered, and that was the case of Nickerson, the pirate[2]—who was tried without a jury, and whose judges were the Governours of Massachusetts, and of some neighbouring provinces, together with Admiral Montague, and some gentlemen of distinction. Although this trial was without a jury, yet as it was a trial upon the *civil* law, there was not so much clamour about it, as otherwise there might have been; but still it was disagreeable to the people, and was one ground of the then complaints. But the trial by jury was not attempted to be taken from *civil causes*—It was no object of power, whether one subject's property was lessened, while another's was increased; nor can it now be an object with the federal legislature. What interest can they have in constituting a judicial, to proceed in *civil* causes without a trial by jury? In criminal causes by the proposed government, there *must be* a jury. It is asked, why is not the Constitution as *explicit* in securing the right of jury in *civil*, as in criminal cases? The answer is, because it was out of the power of the Convention: The several States differ so widely in their *modes* of trial, some States using a jury in causes wherein other States employ only their judges, that the Convention have very wisely left it to the federal legislature to make such regulations, as shall as far as possible, accomodate the whole. Thus our own State constitution authorizes the General Court to erect judicatories—but leaves the nature, number and extent of them, wholly to the discretion of the legislature. The bill of rights indeed secures the trial by jury in civil causes, *except in cases* where a contrary practice has obtained.[3] Such a clause as this, some gentlemen wish were inserted in the proposed Constitution, but such a clause would be absurd in that Constitution, as has been clearly stated by the Hon. Gentleman from Charlestown, *(Mr. Gorham)* because the ''exception of all cases where a jury have not heretofore been used'' would include almost all cases that could be mentioned when applied to *all* the States, for they have severally differed in the kinds of causes where they have tried without jury.[4]

1. Commenting on this sentence, ''Alfred'' stated that ''The supreme judicial power is lodged in a court. I will not affront the understanding of the people by exposing the

weakness of an observation made in the convention by a law character, . . . it is enough for the present purpose, that it does not certainly, and necessarily, include it, because it is a point too important to be left constitutionally doubtful. To say it may be provided for by laws as well as by the constitution, is to arraign the wisdom of the people of the whole union; for they have all solemnly adopted it as a fundamental and principal right in their forms of government'' (Alfred III, *Massachusetts Spy*, 23 October 1788, RCS:Mass. Supplement, 446–47).

2. Dawes refers to the case of *Rex* v. *Nickerson*. In November 1772 a Chatham, Mass., vessel sighted another vessel (bound from Boston to Chatham) flying a distress signal. Ansell Nickerson, who was discovered on the distressed vessel, told the captain of the Chatham vessel that three crew members had been murdered and thrown overboard by pirates, who also carried away a young boy. Nickerson, the only crew member to escape, was taken to Chatham, questioned, and then released. A man-of-war was sent to look for the pirates. The authorities, having second thoughts about Nickerson, took him into custody and reexamined him. Nickerson was then committed ''in order to receive Directions from the Governor.''

Soon after, Nickerson was taken to Boston, where he was questioned by the Commissioners for the Trial of Piracy, including Governor Thomas Hutchinson, Lieutenant Governor Andrew Oliver, and Admiral John Montagu, commander of the North American Squadron. After the man-of-war returned without finding the pirates, the commissioners decided to hold Nickerson for trial. They convened a Special Court of Admiralty for the Trial of Piracies. In December 1772 Nickerson pleaded not guilty before the court and was put in prison. The court adjourned until June 1773.

Nickerson's trial for murder and piracy began on 28 July 1773, when he was defended by John Adams and Josiah Quincy, Jr. The case was tried without a jury before eight commissioners, with Hutchinson serving as president. On 5 August Nickerson was found not guilty on procedural grounds and lack of direct evidence. The commissioners had divided four and four on the matter. Hutchinson, who believed that Nickerson was guilty, was attacked during this episode for being in favor of juryless trials. (See L. Kinvin Wroth and Hiller B. Zobel, eds., *Legal Papers of John Adams* [3 vols., Cambridge, Mass., 1965], II, 335–51.)

3. See Article XV of the Massachusetts Declaration of Rights (BoR, I, 79).

4. Nathaniel Gorham's comments have not been preserved in any version of the debates that has been located.

William Cushing: Undelivered Speech in the Massachusetts Convention, c. 4 February 1788 (excerpt)[1]

. . . And first as to a bill of rights, wch. the worthy Gent. from Sutton,[2] thinks wanting.

Bills of rights originated in antient despotic times; in the times of despotic Kings, whose prerogatives were boundless & whole will alone was law. I will mention one Instance—in the Reign of Chs. the I., the spirits of the Commons rose high agst. his usurpations, & Ld. Coke & others drew up a *bill* of rights, which the King was obliged to assent to, before he could obtain a grant of monies he demanded.[3]

But it was of no consequences, for no sooner had he assented to the bill of rights *than* he trampled the whole under foot.[4] The short of the

matter is,—when the people could extort an Acknowledgment of some of their essential rights as freemen from the King, who before had ~~full~~ possõn of the whole, they thought they gained a great point.

Twas then deemed treason to hold, that all civil power originated from the people & that its sole End was their good.

But now this being the only doctrine of the country, & well understood by every man, we should lay ourselves under a disadvantage to go about to enumerate all the particular rights we meant to retain, because we might inadvertently omit some important ones which would thereby be lost

The fact is (& it is a selfevident proposition)—we retain all that we do not part with.

And this is the only safe Idea that the freemen of America can rest upon when they assemble to draw up forms & delegate powers of govmt.

And therefore it is that *in the* Constitution of New York, & a number of others—there is no bill of rights at all;—*going Upon this Sure* ground, *that* no authority could be exercised over the *people*, but such as should be expressly granted by them; which in my opinion is better & safer than any bill of rights that the wisest mortal can draw by attempting a particular enumeration of rights.

It is said still that without the guard of a bill of rights, Congress might even prescribe a religion to us;—That could not be without a downright usurpation which we should have as good a right to refuse without a bill of rights as with one—I will put a plain case precisely in point.

A man makes a power of atty to his friend to receive monies due upon certain notes of hand, which he specifies, with dates Sums & names. Does such a power authorise the Atty to receive monies upon any other notes (not named) or to touch real Estate? No more can Congress impose a Religion upon us without color of warrant or authority ~~a Shadow of authority given in any one paragraph of the whole System~~.

The doctrine that rulers may have the Controll of the peoples rights, without their grant, is better adapted to the despotic monarchies of the East than to this Enlightned Country—and our Constituents will have no reason to thank us for placing their Liberties upon so dangerous a foundation, as necessarily implies that *they* are all born slaves, instead of being born free & equal.[5] . . .

1. MS, Cushing Papers, MHi.

2. For speeches about rights by Amos Singletary on 19 January in which he said that the lack of a religious test allowed men to be elected who would endanger rights, and

on 24 January when he denigrated the Constitution's provision guaranteeing the states a republican form of government, see RCS:Mass., 1254–55, 1340.

3. The reference is to the Petition of Right adopted by Parliament in 1628 under the leadership of, among others, Sir Edward Coke. After Charles I accepted the Petition, the House of Commons voted him the five subsidies he had demanded.

4. In 1629 Charles I dissolved Parliament and ruled without it for eleven years, continuing to raise money in various ways, which, although not illegal, were contrary to principles laid out in the Petition of Right.

5. This and the preceding paragraph represent one of Cushing's insertions, which is itself a rewrite of an earlier version that Cushing meant to be inserted. His original insertion reads, "I will put a plain case in point—a man makes a power of attorney to receive monies due upon certain notes of hand, wch. he specifies as to dates, sums & names. Does such a power authorize the atty. to, receive mony upon any other Notes (not named) or to touch the real estate? No more can Congress prescribe a religion to us without ~~we have given them no such power~~ a shadow authority so much hinted at in any one paragraph clause or sentence of the whole system. The doctrine that ~~Congress~~ Rulers may have the Controll of ~~our~~ the people's rights, without their grant ~~of Subversive of will do~~ is a doctrine better adapted for the despotic Monarchies of Europe, or asia, than to this enlightened Country which our fellow citizens will not have reason to thank us for [altering their?] Liberties upon such ~~dangerous~~ precarious & I may say such a contemptible a foundation, as necessarily implies that we are all born Slaves instead of being born free & equal."

John Taylor: Speech in the Massachusetts Convention 5 February 1788

. . . Dr. TAYLOR examined the observations of several gentlemen, who had said, that had the Constitution been so predicated as to require a bill of rights to be annexed to it, it would have been the work of a year—and could not be contained but in volumes.—This, if true, he said, was an argument in favour of one being annexed: But so far from its being the case, he believed any gentleman in that Convention, could form one in a few hours—as he might take the bill of rights of Massachusetts for a guide:[1] He concluded by objecting to the amendments because no assurance was given, that they ever would become a part of the system.[2]

1. For the Massachusetts Declaration of Rights (1780), see BoR, I, 75–81.

2. For the amendments proposed by the Massachusetts Convention on 6 February 1788, see BoR, I, 243–45n.

Theophilus Parsons: Speech in the Massachusetts Convention 5 February 1788

Mr. PARSONS demonstrated the impracticability, of forming a bill, in a national Constitution, for securing individual rights, and shewed the inutility of the measure, from the idea, that no power was given to

Congress to infringe on any one of the natural rights of the people by this Constitution—and should they attempt it, without constitutional authority, the act would be a nullity, and could not be enforced.

Massachusetts Centinel, 26 January 1788

To the CONVENTION.

A word to the wise, is sufficient; therefore my address shall be short.—

It is allowed by all, that we must establish a national government; it is also known, that amongst all the opposers of the new Constitution, no one has offered to our consideration another system.—*They pull down*, but, like the enemies of Christianity, give us nothing in lieu of the system *they destroy*.—This circumstance, demonstrates either the perfection of the new Constitution, or the weakness of its opposers, or both. Reason and not names, should determine our judgment; but, when we observe the great majority in the Continental Convention for the Constitution; the large majority in the several States which have adopted it; the great majority in this Commonwealth, who have had the best means of information;—and also, the small number against it, who are considered (even by their most partial friends) as competent judges of this great concern—when all these circumstances are duly considered, they will have weight with impartial minds.

As this is a republican Constitution, the people can make alterations, and additions, whenever a majority of them please—and the experience of a few years, will no doubt point out the propriety of making some. The greatest opponents, allow the necessity of a new government; their fears are, that it may not be well administered, after a few years—But why may not our children be as wise as we are, and as vigilant to have their government well administered?

The checks are innumerable; *all the outs*, who wish for a seat in Congress—all the legislative and executive powers of the States—and in short, all the people of America.—Besides these external checks, are to be considered, the sensible and honest men in Congress; of which we ought to suppose there will be a number, even in the most corrupt times.—WITH ALL THESE CHECKS, is it rational to suppose that our representatives in Congress, will pursue measures to injure their constituents?—Such a supposition can spring only from extreme jealousy, or the clamourous brains of giddy politicians. The opposers ought to consider, that there is but *one step* between our *present situation* and monarchy!—and that many *oppose* with no other view but to introduce a monarchy!

Plain Truth
Philadelphia Independent Gazetteer, 26 January 1788[1]

Mr. OSWALD, Your paper is so full of pieces against the proposed constitution for the United States, that I know not whether I shall be able to get a word in edge-ways among them. I shall be but short, Mr. Printer, and, indeed, the arguments of the minority [of the Pennsylvania Convention] and their friends out of doors, might also have been comprised in a small compass. We are afraid of tyranny, say they; but, the fact is, they are only afraid that they themselves will not, as heretofore, be allowed to exercise that tyranny. We want a bill of rights, say they; but that is only a sham; for, they themselves have often broke through both bill of rights, constitution, and law of the state, and that, sometimes, to serve a very paltry party and purpose. The great men, the well born, will do as they please, say they; but the mischief is, that the would-be great men of our party will then become cyphers; our great leader, Judge B—y—n [i.e., George Bryan], will lose his influence; though, indeed, that will be no loss to the public; for he has been very often opposed to the public good; he opposed the five per cent. duty, proposed to be given to Congress;[2] the not giving of which has been the source of all our misfortunes; and he can prostitute his magisterial authority to serve as paltry a party and purpose as we can. Bribery and corruption will take place, say they; but the fear is, that we will no longer share the loaves and fishes; not even a few oysters and a little ale; after sporting with both civil and religious liberty, in order to serve our friends. Men in power are naturally tyrants, say they; and they might have added, as has been fully exemplified in our conduct; for, whenever we had the power, we stuck at nothing to gain our purposes.

1. Reprinted: Boston *American Herald*, 25 February.
2. For the Impost of 1781, see CDR, 140–41.

Agrippa XV
Massachusetts Gazette, 29 January 1788 (excerpts)[1]

To the MASSACHUSETTS CONVENTION.

GENTLEMEN, As it is essentially necessary to the happiness of a free people, that the constitution of government should be established in principles of truth, I have endeavoured, in a series of papers, to discuss the proposed form, with that degree of freedom which becomes a faithful citizen of the commonwealth. It must be obvious to the most careless observer, that the friends of the new plan appear to have nothing more in view than to establish it by a popular current, without any

regard to the truth of its principles. Propositions, novel, erroneous and dangerous, are boldly advanced to support a system, which does not appear to be founded in, but in every instance to contradict, the experience of mankind. We are told, that a constitution is in itself a bill of rights; that all power not expressly given is reserved; that no powers are given to the new government which are not already vested in the state governments; and that it is for the security of liberty, that the persons elected should have the absolute controul over the time, manner and place of election. These, and an hundred other things of the like kind, though they have gained the hasty assent of men, respectable for learning and ability, are false in themselves, and invented merely to serve a present purpose. This will, I trust, clearly appear from the following considerations. . . .

It has been shown in the course of this paper, that when people institute government, they of course delegate all rights not expressly reserved. In our state constitution the bill of rights consists of thirty articles.[2] It is evident therefore that the new constitution proposes to delegate greater powers than are granted to our own government, sanguine as the person was who denied it. The complaints against the separate governments, even by the friends of the new plan, are not that they have not power enough, but that they are disposed to make a bad use of what power they have. Surely then they reason badly, when they purpose to set up a government possess'd of much more extensive powers than the present, and subject to much smaller checks.

Bills of rights, reserved by authority of the people, are, I believe, peculiar to America. A careful observance of the abuse practised in other countries has had its just effect by inducing our people to guard against them. We find the happiest consequences to flow from it. The separate governments know their powers, their objects, and operations. We are therefore not perpetually tormented with new experiments. For a single instance of abuse among us there are thousands in other countries. On the other hand, the people know their rights, and feel happy in the possession of their freedom, both civil and political. Active industry is the consequence of their security; and within one year the circumstances of the state and of individuals have improved to a degree never before known in this commonwealth. Though our bill of rights does not, perhaps, contain all the cases in which power might be safely reserved, yet it affords a protection to the persons and possessions of individuals not known in any foreign country. In some respects the power of government is a little too confined. In many other countries we find the people resisting their governours for exercising their power in an unaccustomed mode. But for want of a bill of rights the resistance

is always by the principles of their government, a rebellion which nothing but success can justify. In our constitution we have aimed at delegating the necessary powers of government and confining their operation to beneficial purposes. At present we appear to have come very near the truth. Let us therefore have wisdom and virtue enough to preserve it inviolate. It is a state contrivance, to get the people into a passion, in order to make them sacrifice their liberty. Repentance always comes, but it comes too late. Let us not flatter ourselves that we shall always have good men to govern us. If we endeavour to be like other nations we shall have more bad men than good ones to exercise extensive powers. That circumstance alone will corrupt them. While they fancy themselves the vicegerents of God, they will resemble him only in power, but will always depart from his wisdom and goodness.

1. For the entire essay, see RCS:Mass., 822–26.
2. See BoR, I, 76–80.

Civis Rusticus

Virginia Independent Chronicle, 30 January 1788 (excerpts)[1]

(*The following was written previous to the publication of that in Mr. Dixon's paper of the* 5*th instant,*[2] but not sent to the printer when written from want of a conveyance, the person who wrote it living at a distance from Richmond.)

To Mr. DAVIS.

The following "objections to the Constitution of Government formed by the Convention," are stated to be Col. Mason's.[3]

I shall remark on them with that freedom which every person has a right to exercise on publications, but, with that deference, which is due to this respectable and worthy gentleman; to whose great and eminent talents, profound judgment, and strength of mind, no man gives a larger credit, than he, who presumes to criticise his objections—these, falling from so great a height, from one of such authority, may be supposed, if not taken notice of, to contain arguments unanswerable—not obtruding themselves on my mind in that forcible manner, I submit to the decision of the public, whether, what is now offered, contain declamation or reason; cavil, or refutation.

1st. "There is no declaration of rights; and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights in the separate states are no security. Nor are the people secured even in the enjoyment of the benefits of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several states. . . .

10th. There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil causes; nor against the danger of standing armies in time of peace. . . .

13th. Both the general legislature and the state legislatures are expressly prohibited making expost facto laws; though there never was, nor can be a legislature but must and will make such laws, when necessity and the public safety require them; which will hereafter be a breach of all the constitutions in the union, and afford precedents for other invocations.[4] . . .''

Ob. 1st. This objection proves too much, it goes against all sovereignty, ''it being paramount to all laws of the several states, the declaration of rights in the separate states are no security,'' if the declaration of rights in the separate states be no security, which it is confessed are not repealed, neither would a general declaration of rights be any security, for the sovereign who made it could repeal it; ''the very title of sovereignty shews the absurdity of an irrevocable law.'' The people have every security of enjoying the benefits of the common law, and all acts of parliament previous to the fourth of James the first, they ever had—they remain unrepealed,[5] and are the palladium of the rights of the people: as long as *they* retain the spirit of freedom, these rights will exist, amidst the mighty shock of revolutions, the crush of power, the fall of colonies, and the rise of empires.

There are only five states in the union that have declarations of rights[6]—the proposed government is thoroughly popular—the house of representatives are immediately chosen by the people, the senate mediately by their representatives *in Assembly*, and the president by electors, in such manner as the legislature of the state may direct—at the end of four years, he may, and will be removed from his situation, unless he discharge the duties of it, to the approbation of the people, and to the glory and advantage of America. A government thus constituted stands in need of no bill of rights; the liberties of the people never can be lost, until they are lost to themselves, in a vicious disregard of their dearest interests, a sottish indolence, a wild licentiousness, a dissoluteness of morals, and a contempt of all virtue. . . .

10th. ''No declaration of the liberty of the press.'' Our Bill of Rights declares, and it is not repealed, that the freedom of the press is one of the great bulwarks of the liberty of the people, and never can be restrained, but by despotic power.[7] The people of England have no other security for the liberty of the press, than we have—Their own spirit, and an act of parliament—their act of parliament *may* be repealed—our Bill of Rights *may* be repealed. Of that no man has any fear, of this no man need have, while this spirit is in the people—''This peculiar

privilege must last (says a learned writer) as long as our government remains, in any degree, free and independent—it is seldom that liberty of any kind is lost at once—slavery has so frightful an aspect to men accustomed to freedom, that it must steal upon them by degrees, and disguise itself in a thousand shapes in order to be received—But, if the liberty of the press ever be lost, it will be lost at once.—The general laws against sedition and libelling are at present as strong as they can possibly be made, nothing can impose a further restraint, but, either clapping an imprimatur on the press, or giving to the court very large discretionary powers, to punish whatever displeases them—but these concessions would be such a bare faced violation of liberty, that they will probably be the last efforts of a despotic government—Hume's essay vol. 1. p. 17."[8] . . .

13th. Ex post facto laws have ever been considered as abhorrent from liberty: necessity and public safety never can require them—"If laws do not punish an offender, let him go unpunished; let the legislature, admonished of the defect of the laws, provide against the commission of future crimes of the same sort—The escape of one delinquent can never produce so much harm to the community, as may arise from the infraction of a rule, upon which the purity of public justice, and the existence of civil liberty essentially depend"—Pæley's Principles of Moral Philosophy, vol. 2. p. 234.[9] Oc[tavo] Ed. . . .

1. On 23 January the *Virginia Independent Chronicle* reported that "Civis Rusticus" was received. For the entire piece, see RCS:Va., 331–40n.

2. John Dixon's *Virginia Gazette and Independent Chronicle* of 5 January has not been located. "Civis Rusticus" dated his essay 29 December.

3. See "George Mason: Objections to the Constitution," 7 October (BoR, II, 28–31). The objections that appeared in the *Virginia Journal* on 22 November were not numbered (CC:276–B). "Civis Rusticus" combined some of the objections and changed punctuation, words, and capitalization. He also deleted one passage. (For a significant alteration, see note 4 immediately below.)

4. "Innovations" in the *Virginia Journal* version.

5. See "Brutus," *Virginia Journal*, 6 December 1787 (BoR, II, 189). See also James Madison to George Washington, 18 October (RCS:Va., 77).

6. See note 1 to "One of the People," *Maryland Journal*, 25 December 1787 (BoR, II, 210n).

7. See BoR, I, 113.

8. David Hume, *Essays, Moral, Political and Literary* (London, 1963), Part I, essay II ("Of the Liberty of the Press"), 12n. This essay was first printed in Edinburgh in 1741.

9. William Paley, *The Principles of Moral and Political Philosophy* (4th Amer. ed., from the 12th Eng. ed., Boston, 1801), Book VI, chapter VIII, 376. The *Principles* was first published in London in 1785.

Aristides: Remarks on the Proposed Plan of a Federal Government, Annapolis, Md., 31 January 1788 (excerpt)

On 10 and 24 January, advertisements in the Annapolis *Maryland Gazette* announced that a pamphlet by "Aristides" was at the press and would soon be published. On the 31st, another advertisement announced the publication of *Remarks on the Proposed Plan of a Federal Government, Addressed to the Citizens of the United States of America, And Particularly to the People of Maryland, By Aristides* (Evans 21131). *Remarks* was printed by Frederick Green, printer to the state and co-publisher of the Annapolis *Maryland Gazette*.

The author was immediately apparent. Alexander Contee Hanson had used the pen name "Aristides" for many years, so that it was "equal to a public avowal of the author" ("Aristides," *Maryland Journal*, 4 March [extra], RCS: Md., 357). Hanson also acknowledged authorship in several private letters (CC:490 B–E).

Hanson's forty-two page pamphlet, dated "Annapolis, January 1, 1788," was inscribed "To George Washington, Esquire, Not as a Tribute to the Worth, which no Acknowledgement, or Distinctions, can reward; but to do himself an Honour, which, by labouring in the same Common Cause, he flatters himself, in some Degree, he hath deserved; the Author begs Leave to inscribe the following imperfect Essay." The title page contains a quotation from Montesquieu's *Spirit of Laws*: "As a confederate government is composed of petty republics, it enjoys the internal happiness of each; and with regard to its external situation, by means of the association, it possesses all the advantages of extensive monarchies" (Vol. I, Book IX, chapter 1, 187).

"Aristides'" pamphlet circulated in several states. Early in February Hanson sent fifty copies to Thomas Bradford, the printer of the Philadelphia *Pennsylvania Journal*. Although personally unacquainted with Bradford, Hanson asked for his help in selling the pamphlet. On 6 February Hanson forwarded another fifty pamphlets to Tench Coxe in Philadelphia. Coxe was told to keep a copy for himself and to give individual copies to Benjamin Franklin, William Hamilton, and James Wilson. The remaining copies were to be delivered to Bradford (CC:490–B). Despite Hanson's fears, the pamphlets were received and were first advertised for sale in Philadelphia on 13 February. Hanson also sent copies to Virginia and New York. Sales were brisk in the former and slow in the latter (CC:490–E). Hanson gave a copy to George Washington. Horatio Gates and George Nicholas also received copies from correspondents. Hanson sent "a large pacquet of Pamphlets," to his uncle Benjamin Contee, then serving as a Maryland delegate to Congress in New York (Tench Coxe to James Madison, 15 February, CC:531). William Irvine and Nicholas Gilman, also delegates to Congress, forwarded copies to correspondents in their home states—William Findley in Pennsylvania and President John Sullivan in New Hampshire. In London, John Brown Cutting had the pamphlet by July 1788 and wrote Thomas Jefferson in Paris that he would transmit it to him "If a good private opportunity occurs soon" (Boyd, XIII, 337).

Federalists, especially in Maryland, praised "Aristides." Dr. Philip Thomas of Frederick, Md., Hanson's brother-in-law, wrote that he had read the pam-

phlet ''several times over with much more pleasure than it has been, or will be, read, I suppose, by 99 in a 100; not barely because I feel myself As much interested in the adoption of the plan in proportion to my rank & worth As Any One can be; but because it is the work of one of my most dear friends, Judge Hanson. Whether the work deserves all, or one half, the merit which I, & several others, think it possesses I know not. there is one thing however that must *recommend* it to your attention & that is, the independent style in which it is wrote which serves as an incontestible proof that the Author wrote without favor or partiality; and I beleive you are not a stranger to his character for integrity'' (to Horatio Gates, 21 March, RCS:Md., 407). ''A Plebeian'' asserted that Hanson's ''patriotic, sensible essay'' eliminated ''the necessity of further disquisition''; while ''A Real Federalist'' suggested that no ''man can doubt'' after reading the pamphlet (*Maryland Journal*, 14, 21 March, BoR, II, 370, and RCS:Md., 425, respectively). An anonymous writer from Washington County, Md., described ''Aristides'' ''as the supreme Arbiter, and final Appeal, in all Cases of Controversy between Federalists and Antifederalists'' (*Maryland Journal*, 4 April, RCS:Md., 487).

George Nicholas, a Virginia lawyer, believed that ''Judge Hanson's performance . . . [was] sensible and well written'' (to David Stuart, 9 April, RCS:Va., 712). ''A Gentleman of Distinction'' from Berkeley County, Va., who had received the pamphlet from his correspondent, wrote ''that not only Maryland, but every State in the Union is under much Obligation to that Gentleman for his masterly Defence of the proposed Constitution . . .'' (*Maryland Journal*, 11 April, RCS:Va., 736). A Pennsylvania correspondent described ''Aristides'' as one of the Federalist writers whose writings ''are full of profound political wisdom'' (*Pennsylvania Gazette*, 30 April, CC:718). A gentleman in London, who had received a copy of the pamphlet from his correspondent, reported that he had ''read it over and over, with a great deal of pleasure,'' and he had ''seen a great many Copies in different Hands, and it seems very generally to be admired'' (*Maryland Journal*, 23 September).

The most serious and sustained rebuttal to ''Aristides'' came from ''A Farmer,'' perhaps John Francis Mercer, who chided Hanson for choosing a pseudonym that revealed his identity. Hanson had sacrificed ''prudence to vanity'' (Baltimore *Maryland Gazette*, 15 February, 1 April, BoR, II, 316. For Hanson's defense of his choice of pen names, see ''Aristides,'' *Maryland Journal*, 4 March [extra], RCS:Md., 358–59.). ''A Farmer'' attacked ''Aristides'' for having ''generally erred and frequently mistated in his remarks.'' ''Many of his remarks betray a misrecollection of the A, B, C, of politics, and some of the historical questions discover a total absence of memory'' (Baltimore *Maryland Gazette*, 15, 29 February, BoR, II, 323, and RCS:Md., 332, respectively). Antifederalist William Findley concurred: ''the Author gives greater evidences of his good will to support, and his enthusiastical abilitys to declaim, in favour of the new System, than of his digested knowledge of the operations of political principles upon Government or candour in stating the objections which he pretends to refute or his good sense in aranging the principles which he professes to explain. I conclude that the Author hath never passed the threshold of politics or else considers his readers to have little understanding . . .'' (to William Irvine, 12 March, CC:613).

Three reviews of the *Remarks* have been located. A reviewer in the New York *American Magazine*, May 1788, wrote that "These remarks are not all original, but they are very judicious, calculated to remove objections to the proposed plan of government, and written with spirit and elegance." A writer in the London *Monthly Review*, June 1788, praised the Constitution but thought that "Aristides'" uncritical support—"I would not change a single part"—excessive. Another London commentator believed that the pamphlet contained "very sensible arguments, and a species of eloquence that flows from sincerity of intention. . . . This treatise is written in a careless and somewhat slovenly manner, with regard to style and composition; but it contains a great deal of sound political observation" (For all three reviews, see RCS: Md. Supplement, 21–24. The last review was reprinted in the New York *Gazette of the United States*, 25 April 1789).

The title page of Hanson's copy of the pamphlet is endorsed "Written in December 1787." Hanson bound this pamphlet and several others written by him in a single volume labeled "Hanson's Pamphlets." Shortly before his death he gave the compilation to his son Charles Wallace Hanson (1784–1853), who, in turn, gave the volume to the Maryland Historical Society in 1852.

For the text of the entire pamphlet, see CC:490–A; RCS:Md., 224–60.

. . . I return to the powers of congress. They are almost universally admitted to be proper for a federal head, except only the *sweeping clause*, and the power of raising fleets and armies, without any stint or limitation, in time of peace. The clause runs thus:

Art. 1, sect. 8, par. the last. "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."

It is apprehended, that this *sweeping clause* will afford pretext, for freeing congress from all constitutional restraints.

I will not here again insist on the pledge we enjoy, in the common interest, and sure attachment of the representatives and senate; setting aside the little probability of a majority in each branch lying under the same temptation. Consider the import of the words.

I take the construction of these words to be precisely the same, as if the clause had proceeded further and said, "No act of congress shall be valid, unless it have relation to the foregoing powers, and be necessary and proper for carrying them into execution." But say the objectors, "The congress, being itself to judge of the necessity and propriety, may pass any act, which it may deem *expedient*, for any other purpose." This objection applies with equal force to each particular power, defined by the constitution; and, if there were a bill of rights, congress might be said to be the judge of that also. They may reflect however, that every judge in the union, whether of federal or state appointment, (and some persons would say every jury) will have a right

to reject any act, handed to him as a law, which he may conceive repugnant to the constitution. . . .

I proceed to attack the whole body of anti-federalists in their strong hold. The proposed constitution contains no *bill of rights*.

Consider again the nature and intent of a federal republic. It consists of an assemblage of distinct states, each completely organized for the protection of its own citizens, and the whole consolidated, by express compact, under one head, for their general welfare and common defence.

Should the compact authorise the sovereign, or head, to do all things it may think necessary and proper, then is there no limitation to its authority; and the liberty of each citizen in the union has no other security, than the sound policy, good faith, virtue, and perhaps proper interests, of the head.

When the compact confers the aforesaid general power, making nevertheless some special reservations and exceptions, then is the citizen protected further, so far as these reservations and exceptions shall extend.

But, when the compact ascertains and defines the power delegated to the federal head, then cannot this government, without manifest usurpation, exert any power not expressly, or by *necessary* implication, conferred by the compact.

This doctrine is so obvious and plain, that I am amazed any good man should deplore the omission of a bill of rights. When we were told, that the celebrated Mr. Wilson had advanced this doctrine in effect, it was said, Mr. Wilson would not dare to speak thus to a CONSTITUTIONALIST.[1] With talents inferior to that gentleman's, I will maintain the doctrine against any CONSTITUTIONALIST who will condescend to enter the lists, and behave like a gentleman.—

It is, however, the idea of another most respectable character, that, as a bill of rights could do no harm, and might quiet the minds of many good people, the convention would have done well to indulge them.—With all due deference, I apprehend, that a bill of rights might not be this innocent quieting instrument. Had the convention entered on the work, they must have comprehended within it every thing, which the citizens of the United States claim as a natural or a civil right. An omission of a single article would have caused more discontent, than is either felt, or pretended, on the present occasion. A multitude of articles might be the source of infinite controversy, by clashing with the powers intended to be given. To be full and certain, a bill of rights might have cost the convention more time, than was expended on their other work. The very appearance of it might raise more clamour than its omission,—I mean from those, who study pretexts for condemning

the whole fabric of the constitution.—"What! (might they say) did these exalted spirits imagine, that the natural rights of mankind depend on their gracious concessions. If indeed they possessed that tyrannic sway, which the kings of England had once usurped, we might humbly thank them for their *magna charta*, defective as it is. As that is not the case, we will not suffer it to be understood, that their *new-fangled* federal head shall domineer with the powers not excepted by their precious bill of rights. What! If the owner of 1000 acres of land thinks proper to sell one half, is it necessary for him to take a release from the vendee of the other half? Just as necessary is it for the people to have a grant of their natural rights from a government, which derives every thing it has, from the grant of the people."—

The restraints laid on the state legislatures will tend to secure domestic tranquillity, more than all the bills, or declarations, of rights, which human policy could devise. It is very justly asserted, that the plan contains an avowal of many rights. It provides, that no man shall suffer by ex post facto laws, or bills of attainder. It declares, that gold and silver only shall be a tender for specie debts; and that no law shall impair the obligation of a contract. . . .

1. For James Wilson's speech of 6 October 1787, see BoR, II, 25–28. In Pennsylvania politics "Constitutionalists" were the party that supported the state Constitution of 1776 and the federal system of the Articles of Confederation. They were opposed by "Republicans."

Thomas Jefferson to William Stephens Smith
Paris, 2 February 1788 (excerpt)[1]

. . . I am glad to learn by letters which come down to the 20th. of December that the new constitution will undoubtedly be received by a sufficiency of the states to set it a going, were I in America, I would advocate it warmly till nine should have adopted, & then as warmly take the other side to convince the remaining four that they ought not to come into it till the declaration of rights is annexed to it.[2] by this means we should secure all the good of it, & procure so respectable an opposition as would induce the accepting states to offer a bill of rights, this would be the happiest turn the thing could take. I fear much the effects of the perpetual re-eligibility of the President, but it is not thought of in America, & have therefore no prospect of a change of that article, but I own it astonishes me to find such a change wrought in the opinions of our countrymen since I left them, as that three fourths of them should be contented to live under a system which leaves to their governors the power of taking from them the trial by jury in civil cases, freedom of religion, freedom of the press, freedom of commerce, the habeas corpus laws, & of yoking them with a standing

army, this is a degeneracy in the principles of liberty to which I had given four centuries instead of four years, but I hope it will all come about, we are now vibrating between too much & too little government, & the pendulum will rest finally in the middle.

1. FC, Jefferson Papers, DLC. Printed: Boyd, XII, 557–59.

2. Jefferson reiterated this strategy in letters to James Madison and Alexander Donald, dated 6 and 7 February, respectively (Boyd, XII, 568–70; BoR, II, 308). On 9 and 12 June 1788 Patrick Henry alluded to Jefferson's letter to Donald in the Virginia Convention (RCS:Va., 1051–52, 1210).

Marquis de Lafayette to George Washington
Paris, 4 February 1788 (excerpts)[1]

Your letters Become More and More distant, and I Anxiously Wish for Your Speedy Appointment to the Presidency, in order that You May Have a More Exact Notice of the Opportunities to Write to Me. . . .

We are Anxiously Waiting for the Result of the State Conventions—the New Constitution Has Been Much Examined and Admired By European Philosophers—It Seems the Want of a declaration of Rights, of An Insurance for the trial By juries, of a Necessary Rotation of the President, are, With the Extensive Powers of the Executive, the Principal Points objected to.—Mr Jefferson and Myself Have Agreed that those objections Appear'd to Us Both Well Grounded, But that None Should Be Started Untill Nine States Had Accepted the Confederation—then Amendments, if thought Convenient, Might Be Made to take in the dissidents—as to What Respects the Powers and Possible Permanency of the President I am Easy, Nay I am Pleased With it, as the Reducing of it to What is Necessary for Energy, and taking from it Every dangerous Seed Will Be a Glorious Sheet in the History of My Beloved General. . . .

1. RC, Hubbard Collection, Lafayette College, Easton, Pa. Printed: Abbot, *Washington, Confederation Series*, VI, 84–86.

Agrippa XVI
Massachusetts Gazette, 5 February 1788 (excerpts)[1]

To the MASSACHUSETTS CONVENTION.

GENTLEMEN, In my last address[2] I ascertained, from historical records, the following principles, that, in the original state of government, the whole power resides in the whole body of the nation; that when a people appoint certain persons to govern them, they delegate their whole power; that a constitution is not itself a bill of rights; and that, whatever is the form of government, a bill of rights is essential to the

security of the persons and property of the people. It is an idea favourable to the interest of mankind at large, that government is founded in compact. Several instances may be produced of it; but none is more remarkable than our own. In general I have chosen to apply to such facts as are in the reach of my readers. . . .

I know it is often asked against whom in a government by representation is a bill of rights to secure us? I answer, that such a government is indeed a government by ourselves; but as a just government protects all alike, it is necessary that the sober and industrious part of the community should be defended from the rapacity and violence of the vicious and idle. A bill of rights therefore ought to set forth the purposes for which the compact is made, and serves to secure the minority against the usurpation and tyranny of the majority. It is a just observation of his excellency doctor Adams in his learned defence of the American constitutions, that unbridled passions produce the same effect whether in a king, nobility, or a mob.[3] The experience of all mankind has proved the prevalence of a disposition to use power wantonly. It is therefore as necessary to defend an individual against the majority in a republick, as against the king in a monarchy. Our state constitution has wisely guarded this point. The present confederation has also done it.

I confess that I have yet seen no sufficient reason for not amending the confederation, though I have weighed the argument with candour. I think it would be much easier to amend it than the new constitution. But this is a point on which men of very respectable character differ. There is another point in which nearly all agree, and that is, that the new constitution would be better in many respects if it had been differently framed. Here the question is not so much what the amendments ought to be, as in what manner they shall be made; whether they shall be made as conditions of our accepting the constitution, or whether we shall first accept it, and then try to amend it. I can hardly conceive that it should seriously be made a question. If the first question, whether we will receive it as it stands, be negatived, as it undoubtedly ought to be, while the conviction remains that amendments are necessary; the next question will be, what amendments shall be made? Here permit an individual, who glories in being a citizen of Massachusetts, and who is anxious that the character may remain undiminished, to propose such articles as appear to him necessary for preserving the rights of the state. He means not to retract any thing with regard to the expediency of amending the old confederation, and rejecting the new one totally; but only to make a proposition which he thinks comprehends the general idea of all parties. If the new constitution means

no more than the friends of it acknowledge, they certainly can have no objection to affixing a declaration in favour of the rights of states and of citizens, especially as a majority of the states have not yet voted upon it.—

"Resolved, that the constitution lately proposed for the United States be received only upon the following conditions: . . .

"11. No powers shall be exercised by Congress or the president but such as are expressly given by this constitution and not excepted against by this declaration. And any office[r]s of the United States offending against an individual state shall be held accountable to such state as any other citizen would be. . . .

"13. Nothing in this constitution shall deprive a citizen of any state of the benefit of the bill of rights established by the constitution of the state in which he shall reside, and such bills of rights shall be considered as valid in any court of the United States where they shall be pleaded.

"14. In all those causes which are triable before the continental courts, the trial by jury shall be held sacred."

These at present appear to me the most important points to be guarded. . . .

1. For the entire essay, see RCS:Mass., 863–69n.
2. See "Agrippa" XV, *Massachusetts Gazette*, 29 January (BoR, II, 292–94).
3. Adams, *Defence of the Constitutions*, I, 93.

Massachusetts Convention Recommends Amendments to Constitution, 6 February 1788

For the amendments recommended by the Massachusetts Convention, see BoR, I, 243–45n.

John Trumbull to Jonathan Trumbull, Jr. Paris, 6 February 1788 (excerpt)[1]

D[ea]r Brother

. . . The late doings of America meet with almost universal applause—there are a few who think that the new Constitution is in some points defective:—but all who wish us well agree in their wishes that it may be adopted. leaving to our good sence to correct the few errors which they think remain—such as—that the President instead of being eligible from three years to three years, *durante vita* should be *necessarily* ineligable at any future period after having serv'd six [followg?] because—being constitutionally eligible forever—He becomes an object worthy the intrigues of foreign nations—who may well afford to spend

money to continue a man who shall favour their interests—another correction which is thought essential is a Bill of Rights—in which the Trial by Jury shall be expressly preserv'd in civil Cases as well as Criminal—& the Liberty of the press expressly asserted:—for tho it is not supposed that any of our present Rulers may take advantage of the silence of the Constitution on these subjects—yet future officers may be less delicate: and abuses not absolutely prohibited may encrease from imperceptible beginnings to most dangerous evil.—We are happy however to learn that the voice of the people of America appears so generally approving.—& this [– – –] operation of Finance in the sale of Western land[s] has had the most favorable Effect on the credit & Reputation of our Country. . . .

1. RC, John Trumbell Papers, CtY.

Philadelphiensis IX
Philadelphia Freeman's Journal, 6 February 1788 (excerpt)[1]

. . . To such lengths have these bold conspirators carried their scheme of despotism, that your most sacred rights and privileges are surrendered at discretion. When government thinks proper, under the pretence of writing a libel, *&c.* it may imprison, inflict the most cruel and unusual punishment, seize property, carry on prosecutions, *&c.* and the unfortunate citizen has no *magna charta*, no *bill of rights*, to protect him; nay, the prosecution may be carried on in such a manner that even a *jury* will not be allowed him. Where is that *base slave* who would not appeal to the *ultima ratio*, before he submits to this government? . . .

1. On the same day the Philadelphia *Independent Gazetteer* announced that the essay would appear, as it did, in its issue of 7 February. For the entire essay, see CC:507.

An Old Whig VIII
Philadelphia Independent Gazetteer, 6 February 1788 (excerpt)[1]

. . . I have said that many of the liberties which, by the proposed constitution, are to be surrendered up into the hands of our rulers, will be of no use towards the protection of the people; and a little reflection will convince us, that it is certainly the case. If, indeed, government were really strengthened by such surrender, if the body of the people were made more secure, or more happy by the means, we ought to make the sacrifice. An individual ought to submit to be tossed about, imprisoned and treated injuriously, if the good of his country should

require it; and every individual in the community ought to strip himself of some convenience for the sake of the public good.

I know it is an error not uncommon to believe, that a government is the more powerful in proportion as it is more tyrannical; but this is not the case: so far from it, that it has always been found, that free countries have been able to exert powers far superior to those in which a more absolute government prevailed. For instance, a senate which is master of its own elections, without any or with very little dependence on the people, would not be able to exert as much force as a senate which is freely elected by the people; because the chearful support which would be yielded in the latter case, would far exceed that which could be exacted by the mere force of authority. Again; how could the stripping people of the right of trial by jury conduce to the strength of the state? Do we find the government in England at all weakened by the people retaining the right of trial by jury? Far from it. Yet these things which merely tend to oppress the people, without conducing at all to the strength of the state, are the last which aristocratic rulers would consent to restore to the people; because they encrease the personal power and importance of the rulers. Judges, unincumbered by juries, have been ever found much better friends to government than to the people. Such judges will always be more desireable than juries to a self-created senate, upon the same principle that a large standing army, and the entire command of the militia and of the purse, is ever desireable to those who wish to enslave the people, and upon the same principle that a bill of rights is their aversion. . . .

1. For the entire essay, see CC:506. This essay, mistakenly given the number seven, was not reprinted. "An Old Whig" VII was published on 28 November (BoR, II, 140–44). For the authorship of "An Old Whig," see BoR, II, 35.

The State Soldier II
Virginia Independent Chronicle, 6 February 1788 (excerpt)[1]

. . . Objections which are called general, and really appear so at first, would be started and urged with a degree of plausibility that might impose on some of the best friends to the UNION.

It is well known that several of the states on the continent have never made any formal declaration of their rights. Well aware of the impossibility of enumerating all those blessings to which by nature they were entitled, and highly sensible of the danger there was intrusting to their recollection of them (knowing that when once they attempted to set to them legal bounds, what ever should by chance be left out, was of course given up) some of the states more prudently thought fit to enu-

merate on the other hand what should be the powers of their government, when of course what ever was omited on that side, remained as their natural and inviolable rights on the other. And but few states in the world have deemed it safe to do otherwise.

England itself until the reign of King John remained in this situation, when that foundation of the present British constitution, the Magna Charta of the land, made its appearance, under whose benign influence the plant of liberty was expected to grow and flourish. But unfortunately that bright luminary in the British constitution dawned but with a glimmering ray on this quarter of the world from its first settlement. America, though secured under the constitution of England, from time to time felt itself oppressed by its laws—till at length it was found, but little also than mercy, instead of our own rights, was left us in that government to depend on for safety—"when enquiring into the first principles of society, we became convinced that power, when its object was not the good of those who were subject to it, was nothing more than the right of the strongest, and might be repressed by the exertion of a similar right." And growing more and more restless the attempt soon followed the discovery.

The whole of the states at once becoming united, in what was considered the common cause of all, a general agitation took place, which increased as it extended itself across the continent "like the rolling waves of an extensive sea." When all the world, though interested in the event, stood motionless at first with astonishment at the attempt. Yet relying on the justness of their cause, while destitute of every resource, the thirteen states of America thus united and impressed with a true sense of the origin of power, most piously resolved to maintain those natural rights, the relinquishment of which to aggrandise any power on earth, would only be an insult on that divine authority from whence they sprung.

And to forge indiscriminately now those states into a declaration of their rights, who may think it still unsafe to rely on a bare recital of them, particularly in a general government which at its commencement must involve its authors in too great a variety of difficulties and cares, to be sufficiently mindful of every natural right necessary to be secured to each particular state, would be as unjust and inconsistent with our former pretentions, as its natural consequence—the separation of the states—would be contrary to that policy which gave us success.

But why need I labour thus to prove what is in itself so definitely clear?—The constitution itself admits of no amendments till put in force. To adopt it or reject it is all we have to do—The one I confess is the most ardent wish of my heart—though the other were to entitle

me to the credit of prophesy; from whose foresight I should only most earnestly recommend to you to consider well before the approaching election whether a total dissolution of the UNION is desirable; for that I apprehend to be the only amendment which can be made in the new plan of government by our state convention.

1. For the entire essay, see RCS:Va., 345–53. On 30 January the *Chronicle* announced: "The STATE SOLDIER, No. 2, and the piece signed a PLANTER, are received, and will be published in their turn." Charlottesville lawyer George Nicholas possibly was the author of this essay, the second in a series of five (RCS:Va., 303).

Thomas Jefferson to Alexander Donald
Paris, 7 February 1788 (excerpt)[1]

. . . I wish with all my soul that the nine first Conventions may accept the new Constitution, because this will secure to us the good it contains, which I think great & important. but I equally wish that the four latest conventions, whichever they be, may refuse to accede to it till a declaration of rights be annexed.[2] this would probably command the offer of such a declaration, & thus give to the whole fabric, perhaps as much perfection as any one of that kind ever had. by a declaration of rights I mean one which shall stipulate freedom of religion, freedom of the press, freedom of commerce against monopolies, trial by juries in all cases, no suspensions of the habeas corpus, no standing armies. these are fetters against doing evil which no honest government should decline.

1. FC, Jefferson Papers, DLC. Printed: Boyd, XII, 570–72. For a longer excerpt from this letter, see RCS:Va., 353–54. In a portion of the letter omitted here, Jefferson said that he had received Donald's letter of 12 November (RCS:Va., 154–55).

The James Monroe Papers at the Library of Congress contains a transcript of an extract of this letter to Donald (in Jefferson's hand) which has the following caption: "Extract from the letter of Th:J. to A. Donald dated Paris Feb. 7. 1788. which was quoted to the Virginia convention." Patrick Henry referred to this letter in the Virginia Convention on 9 and 12 June (RCS:Va., 1051–52, 1210). Both Monroe, on 12 July, and Madison, on 24 July, informed Jefferson that Henry had used his letter in the debates (RCS:Va., 1705, 1708).

2. Jefferson had already outlined this procedure for ratification in letters to William Stephens Smith and James Madison on 2 and 6 February, respectively (BoR, II, 301–2; Boyd, XII, 557–59). For another letter, written at this time, that discussed the features the bill of rights should have, see Jefferson to C.W.F. Dumas, 12 February (Boyd, XII, 583–84).

George Washington to Marquis de Lafayette
Mount Vernon, Fairfax County, Va., 7 February 1788 (excerpt)[1]

. . . Should that which is now offered to the People of America, be found on experiment less perfect than it can be made—a Constitu-

tional door is left open for its amelisration [*sic*]. Some respectable characters have wished that the States, after having pointed out whatever alterations and amendments may be judged necessary, would appoint another federal Co[n]vention to modify it upon those documents. For myself I have wondered that sensible men should not see the impracticability of the scheme. The members would go fortified with such Instructions that nothing but discordant ideas could prevail. Had I but slightly suspected (at the time when the late Convention was in session) that another Convention would not be likely to agree upon a better form of Government, I should now be confirmed in the fixed belief that they would not be able to agree upon any System whatever:—So many, I may add, such contradictory, and, in my opinion, unfounded objections have been urged against the System in contemplation; many of which would operate equally against every efficient Government that might be proposed. I will only add, as a farther opinion founded on the maturest deliberation, that there is no alternative—no hope of alteration—no intermediate resting place—between the adoption of this and a recurrence to an unqualified state of Anarchy, with all its deplorable consequences. . . .

1. FC, Washington Papers, DLC. For the entire letter, see CC:509.

A Friend to the Rights of the People: Anti-Fœderalist, No. I
Exeter, N.H., Freeman's Oracle, 8 February 1788 (excerpts)[1]

To the Inhabitants of NEW-HAMPSHIRE.

The grand topick of the day is the New-Constitution, much has been said for, much has been said against it by able writers—On one side, it is warmly asserted, that the liberties of the people, are sufficiently secure, as it now stands—On the other it is urged with equal vehemence, they are not, amendments must be made—a Bill of Rights prefixed, or we are undone; so that it is very difficult, for common people to know what is right, any thing that may serve to throw light upon the subject, may be very useful at this juncture. Both sides, it appears to me, so far as I have had opportunity of reading, have kept the Constitution too much out of view. There seems to be a necessity of a more particular and impartial examination of the thing itself, which is the bone of so much contention. . . .

Remark 9. Upon the discarding [of?] all religious tests, Art. 6. clause 3.—But no religious test shall ever be required as a qualification to any office, or public trust under the United States, according to this we may have a Papist, a Mahomatan, a Deist, yea an Atheist at the helm of Government: all nations are tenatious of their religion, and will have

an acknowledgment of it in their civil establishment; but the new plan requires none at all; none in Congress; none in any member of the legislative bodies; none in any single officer of the United States; all swept off at one stroke contrary to our state plans.[2]—[But?] will this be good policy to discard all religion? It may be said the meaning [is?] not to discard it, but only to show [that?] there is no need of it in public officers, they may be as faithful without as with—this is a mistake—when a man has no regard to God and his laws nor any belief of a future state; he will have little regard to the laws of men, or to the [most?] solemn oaths or affirmations; it is acknowledged by all that civil government can't well be supported without the assistance of religion; I think therefore that so much deference ought to be [paid?] to it, as to acknowledge it in our civil establishment; and that no man is fit [to?] be a ruler of protestants, without he [can?] honestly profess to be of the protestant religion.—To conclude I have now given my sentiments freely and honestly upon this important subject; if it serves to throw any light upon it, I have my desire and should be heartily glad, that the respectable Convention to set at Exeter upon the decisive question, might [have?] all that has been said for, and all that has been said against the Constitution laid before them, that they may have the fullest means of information possible and if, after judiciously and candidly weighing every argument, it is their judgment that it will be for the [greatest?] good of the community to adopt, let them adopt it; but if not let them reject it; and let us make another trial for a new plan, that may in more respects be agreeable, and better secure the liberties of the subjects.

1. William Plumer's copy of this issue at the Boston Athenæum Library has "Thos Cogswell" written above the pseudonym at the end of the essay. The last column on the second page of the only extant issue of this newspaper is run into the gutter, thus causing many words toward the end of the essay to be conjectural. For the entire essay, see RCS:N.H., 109–18.

2. Eleven of the state constitutions required some kind of a religious test for office holding.

A Friend to the Republic: Anti-Fœderalist, No. II
Exeter, N.H., Freeman's Oracle, 8 February 1788 (excerpts)[1]

An Address to the members of the Convention, for the State of New-Hampshire, to meet at Exeter, on the second Wednesday in February 1788, *for the important purpose of deciding upon a Constitution offered by the late Convention, through the medium of Congress. . . .*

It has been said by Mr. Wilson, in support of this Constitution, and against a Bill of Rights,[2] who dare be bold enough to enumerate all

the Rights of a people: Such sophistical assertions may do for his phlegmatick Germans, but will not answer for the bold, free and enterprizing people of New-Hampshire—Every honest man ought to be bold enough to declare his rights—at least, such great and essential ones, as never ought to be trusted to the caprice of any set of men—And you, gentlemen, I hope will be bold enough to spurn at a Constitution, offered you without a Bill of Rights; and receive none unless the most essential ones are enumerated—But I shall say no more on this particular, as abler pens have gone before me. . . .

Be as zealous to ward off *public evil*, as *others are to bring it on*; and you have a fair chance to prevent it for ages yet to come.—I had rather trust my purse in the hands of a sharper, than my liberties in the hands of any set of men, unless they are secured with restraints stronger than their temptations to destroy them; for the former by industry may be replenished; but liberty once lost, is scarce ever recovered, almost as rarely as human life, when it is once extinguished.

1. "Alfredus," Exeter, N.H., *Freeman's Oracle*, 13 June (RCS:N.H., 340, 342, 343n), identified Thomas Cogswell as the author of this piece. For the full essay, see RCS:N.H., 118–20.

2. See James Wilson's speech of 6 October 1787 (BoR, II, 25–28).

John Adams to Cotton Tufts
London, 12 February 1788[1]

My dear Friend

Every Question you ask about the new Constitution Shows that you understand the subject as well as I can pretend to do, and that you are well aware of the reasonable Difficulties and Objections. But is there not danger that a new Convention at this time, would increase the Difficulties and reasonable Exceptions rather than remove any of them? (a Declaration of Rights I wish to see with all my Heart: though I am Sensible of the Difficulty of framing one, in which all the States can agree.—a more compleat Separation of the Executive from the Legislative too, would be more Safe for all. The Press, Conscience & Juries I wish better Secured.—But is it not better to accept this Plan and amend it hereafter? After ten Years Absence from his Country a Man should be modest, but as at present instructed I think I should vote for it, as it is, and promote a Convention after sometime, to amend it). But the Massachusetts will decide before this Letter, reaches you: and all that I can do is to wish that you may determine wisely.—We shall Sail by the first of April and See you, I hope in May. Your Bill in favour of Mr Elworthy is accepted. My Love to all and accept the warmest Thanks

for your kind Attention to the Interest of, my dear sir, your affectionate Friend and obliged humble Servant

1. RC, John Adams, 1775–1819, Misc. Mss. Folder, NHi.

Conciliator
Philadelphia Independent Gazetteer, 12 February 1788 (excerpt)[1]

To all Honest Americans. . . .

The proposed plan is composed of such solid materials, that the more it is examined, the better it appears, and almost every instance of comparison adds new lustre to it. The writers against it are perpetually seeking examples from the old confederation to condemn it, and many constitutions have been quoted (none of which applied to a federal government) to shew the necessity of a bill of rights, but none of these writers have told you that there was NO BILL OF RIGHTS TO THE OLD CONFEDERATION. If this assertion should surprise you, it will be well to search for a federal bill of rights, and if you find one, I shall be surprised in turn: Indeed the 2d article, like the 4th fundamental principle formerly mentioned, renders such an instrument unnecessary, for it there appears that each state, in the natural course of things, retains all powers that it does not expressly give.—You may indeed find a BILL OF WRONGS attached to the confederation, which by consequence contains the single right of separating from Britain, but this has no affinity to the thing so much contended for. What shall we say to this, my friends? shall we say that the opposers to the new constitution are designing men, and endeavour to deceive us? that would be uncharitable. Shall we say that they are ignorant and weak men? that would be contemptuous: Neither of these descriptions I am sure belong to my correspondents. Let us then take the middle line, and suppose them to be good, but enthusiastic men, blinded by mistaken zeal, which cheats their minds into sentiments, that in cooler moments they would themselves condemn. . . .

1. For the entire essay, see RCS:Pa. Supplement, 877–79.

Algernon Sidney II
Philadelphia Independent Gazetteer, 13 February 1788 (excerpt)[1]

. . . Much has been said upon the easy practicability of altering the new constitution without tumult or discord, if it should be found a pernicious or inconvenient system of government. This we shall perceive, however, after examination, to be a delusive idea held out for the purpose of enslaving us by fraud and ambition. It is said, art. 5,

"The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification shall be proposed by the congress." It is obvious to common sense, that an alteration in the government cannot be procured without the approbation and consent of congress. And he must be weak indeed who supposes that when they are entrusted with power, they will grow weary of it, and make a voluntary surrender of it. It seems to have been the design of the framers of the new constitution, that it never should be altered without the greatest difficulty; it is not to be supposed that a large army, when it is once established, and the numerous officers of an extensive government, will quietly chuse to leave their bread, that they may please a set of visionary enthusiasts, for such they will call the advocates of liberty. . . .

1. Reprinted: *New York Journal*, 23 February; Philadelphia *Freeman's Journal*, 2 April. For the entire essay, see RCS:Pa. Supplement, 886–90.

A Citizen of the United States
Pennsylvania Gazette, 13 February 1788[1]

A correspondent, under the signature of *A Citizen of the United States*, says—"It is curious to observe the difference and the contrariety of the objections made against the new constitution. His Excellency Governor Randolph urges the equality of suffrage in the senate as his principal objection—Mr. Martin of Maryland inveighs with great bitterness against the inequality of suffrage in the house of representatives—Mr. Mason appears much mortified that his constitutional council was not incorporated in the plan—Mr. Gerry complains that the rights of election are not properly secured, nor an adequate provision for the representation of the people—Mr. Lansing and Mr. Yates remonstrate against any system that has the most feeble trait of a consolidated Government—Mr. R. H. Lee and other gentlemen of the southern states object that commercial regulations will be under the undue controul of the eastern states—the inhabitants of the latter complain of the unequal burthen of an impost, of which the southern states must pay but very little from the nature of their population—In the middle states the clamor of opposition has been from the want of a bill of rights—Besides these, the commercial states object to parting with

their commercial revenues; while the non-importing states complain of being tributary to the others.—Notwithstanding these various objections, all who urge them acknowledge the merit of the new system in other points, and frequently in those parts opposed by others. Does not all this tend to produce the most decided conviction of the difficulties that were encountered by the late fœderal convention, and the spirit of conciliation manifested in the plan they have proposed? Does it not equally demonstrate the utter impossibility of another general convention, chosen by a people so agitated, and so divided, agreeing upon any general system? And is it not doubtful, that, after such experience, characters of eminence and ability could be found to undertake the task? As such then must be the conclusion of every thinking man, he must deprecate the wretch with execrations of tenfold horror, who should dare to suggest means of violence to reconcile such jarring opinions, and to endeavor to involve this peaceful country in the horrors of intestine war.''

1. Reprinted by 6 April (8): N.H. (1), Mass. (3), Conn. (1), N.Y. (2), Md. (1). Five newspapers, beginning with the Boston *American Herald*, 25 February, reprinted this item without the pseudonym. For the Antifederalists' objections mentioned in this essay, see those of Richard Henry Lee, George Mason, Elbridge Gerry, Edmund Randolph, Robert Yates and John Lansing, Jr., and Luther Martin (BoR, II, 5–12n, 28–31, 50–52, 211–16, CC:447, RCS:Md., 137–40, 144–50, respectively). For a similar description of Martin's objection, see ''George Lux,'' *Maryland Journal*, 25 March (extra), RCS:Md., 568.

A Farmer I
Baltimore Maryland Gazette, 15 February 1788

The Baltimore *Maryland Gazette*—which had published twelve installments of Antifederalist Luther Martin's *Genuine Information* between 28 December 1787 and 8 February 1788—began another substantial series of Antifederalist essays by ''A Farmer'' on 15 February, ending it on 25 April. The essays by ''A Farmer'' were intended to influence the election of delegates to the Maryland Convention scheduled to meet on 21 April and the delegates themselves. The series was an extended critique of Alexander Contee Hanson's pamphlet written under the pseudonym ''Aristides'' and offered for sale on 31 January (BoR, II, 297–301).

''A Farmer'' was a series of seven unnumbered essays, each given a Roman numeral by the editors, which were spread over fourteen issues of the Baltimore *Maryland Gazette*. Numbers III and V were each printed over two issues, while number VII appeared over six. In sharp contrast to the wide circulation of Luther Martin's *Genuine Information*, not a single essay or part of ''A Farmer'' was reprinted in any out-of-state newspaper.

On 12 April Eleazer Oswald of the Philadelphia *Independent Gazetteer* reprinted the twelve essays of *Genuine Information* in a pamphlet of 101 pages to which he added four other documents concerned with Maryland (below). One of these documents, ''Remarks on a Standing Army,'' was identified as having

been written by "A Citizen of the State of Maryland" (CC:678–C). The "Remarks" were excerpts taken almost verbatim from "A Farmer" II, Baltimore *Maryland Gazette*, 29 February (BoR, II, 338–42). Nowhere in the pamphlet is "A Farmer" identified as the author of the "Remarks."

Herbert J. Storing, a student of Antifederalist thought and the editor of an extensive collection of Antifederalist writings, described the essays of "A Farmer" as "Among the more penetrating and comprehensive" of these writings. "A Farmer's" opinions, stated Storing, were "indispensable" to the study of Antifederalist thought on such issues as "a bill of rights, political parties, and especially representation and simple versus complex government" (*The Complete Anti-Federalist* [7 vols., Chicago and London, 1981], V, 5). "A Farmer" challenged "Aristides" on these issues, as well as others, especially on the role of aristocracy and the interpretation of the judiciary. "A Farmer" also accused "Aristides" of making numerous errors and misstatements. "Many of his remarks betray a misrecollection of the A, B, C, of politics, and some of the historical questions discover a total absence of memory." Lastly, "A Farmer" criticized Hanson for using the pseudonym "Aristides" for which he was well known.

No Marylander during the ratification struggle seems to have offered an opinion about the identity of "A Farmer." Storing, however, argues that "it seems likely" that Antifederalist John Francis Mercer, a Maryland lawyer-planter, was "A Farmer." Convinced that the Constitution would not solve America's problems, Mercer left the Constitutional Convention early. He became a member of the Maryland Convention to consider the Constitution, voting against ratification in that body.

Storing based his conclusions about "A Farmer's" identity on the similarities between "A Farmer's" essays and three sources: (1) James Madison's report of a speech that Mercer delivered in the Constitutional Convention on 14 August 1787, (2) a letter that Mercer wrote between 19 and 27 October 1804 to President Thomas Jefferson, and (3) an unpublished manuscript in Mercer's handwriting that was entitled "Address to the Members of the Conventions of New York and Virginia." These similarities concerned simple government versus mixed or complex government; representation as a system tending toward aristocracy or tyranny; the belief that England was an example of mixed government; and the need for a strong executive in any effective government (*Complete Anti-Federalist*, V, 5–6).

Storing informed his readers that he had provided references "to the main points of similarity, so that the reader can judge for himself the accuracy of the editor's opinion that Mercer was in all probability the author of this interesting and important series of essays." Storing himself provided the reader with the third document listed above (*Complete Anti-Federalist*, V, 101–6). Mercer's comments in the Constitutional Convention are in Farrand, II, 284–85, and the transcription of a lengthy excerpt from Mercer's letter to Jefferson is in James Mercer Garnett, "John Francis Mercer, Governor of Maryland, 1801 to 1803," *Maryland Historical Magazine*, II (1907), 209–12.

Even though "A Farmer" appeared in fourteen issues of the Baltimore *Maryland Gazette*, few responses were published. Alexander Contee Hanson, using the pseudonym "Aristides," defended himself and criticized "A Farmer" in

the *Maryland Journal*, 4 March (extra), 1 April, and 22 April (BoR, II, 359–64, 394–96, 431–34). The last article appeared while Hanson was representing Annapolis in the Maryland Convention in Annapolis. On 14 March "A Plebeian," *Maryland Journal*, praised "Aristides" and criticized "A Farmer" (BoR, II, 370–72).

When men, to whom the guardianship of public liberty has been committed, discover a neglect if not contempt for a bill of rights—when they answer reasons by alledging a fact,—which fact too, is no fact at all—it becomes a duty to bear testimony against such conduct, for silence and acquiescence in political language are synonimous terms.

If men were as anxious about reality as appearance, we should have fewer professions of disinterested patriotism—true patriotism like true piety, is incompatible with an ostentatious personal display.

In a world more cautious than correct, the intrusion of private names in a public cause, is generally considered as a sacrifice of prudence to vanity, and not unfrequently censured as impertinent—in either view it is unreasonable to require it—It is more, it is inadmissable—it would be betraying one of those inestimable rights of an individual, over which society should have no controul—the freedom of the press—and the only recompence for the treason, would be a boundless increase of private malice.[1]

That men who profess an attachment to the liberty of the press, should also require names, is one of those instances of human weakness and inconsistency, that deserves rather pity than resentment. Political as well as religious freedom has ever been and forever will be destroyed by that invariable tendency of enthusiasts and bigots to mark out as objects of public resentment and persecution, those who presume to dispute their opinions or question their infallibility—and whilst there are men, enthusiasm and bigotry will prevail—it is the natural predominance of the passions over reason—The citizens of America are not yet so agitated by the phrenzy of innovation as to forget—that the object of public inquiry is, or ought to be, *truth*—that to convert *truth* into *falsehood*, *right* into *wrong*, is equally beyond the reach of the *good*, the *bad*, the *great* and the *humble*—A great name may indeed *impose falsehood* for *truth*—*wrong* for *right*—and whenever such voluntarily offer themselves, there may be ground for suspicion—But the people may listen with safety to those, who assert no other claim to their attention, than the *reason* and *merit* of their remarks.

To assert that bills of rights have always originated from, or been considered as grants of the King or Prince, and that the liberties which they secure are the gracious concessions of the sovereign, betrays an

equal ignorance of history and of law, or what in effect amounts to the same thing a violent and precipitate zeal.[2]

I believe no writer in the most venal age, has ever openly asserted this doctrine, but the prostituted, rotten Sir Robert Filmer,[3] and Aristides—And the man who at this day would contend in England that their bill of rights is the grant of the King, would find the general contempt his only security—in saying this, I sincerely regret that the name of Aristides should be joined with that of Sir Robert Filmer, and I freely acknowledge that no contemptible degree of talents, and integrity render him who uses it, much more worthy of the very respectable association he has selected for himself—But the errors of such men alone are dangerous—the man who has too much activity of mind, or restlessness to be quiet, qualities to engage public and private esteem, talents to form and support an opinion, fortitude to avow it, and too much pride to be convinced, will at all times have weight in a free country, (especially where indolence is the general characteristic) though that weight he will always find impaired in proportion as he indulges levity, caprice and passion.

I will confine my inquiry to the English constitution—Example *there*, is in a great measure law *here*—and the authority of an American judge on a point of English law, should be digested with coolness and promulgated with caution, because it is frequently conclusory.

The celebrated and only bill of rights of Great-Britain, which is considered as the supreme law of the land, and not to be questioned or impeached in their courts, was the work of that convention of lords and commons in 1688, which declared that *King James 2d, had abdicated the crown, and that the throne had thereby become vacant*, and who after they had compleated and asserted this glorious declaration of the unalienable rights of their fellow citizens, pursuing the peculiar duty of a convention, conferred the crown of the three kingdoms on an alien and foreigner, William the 3d.

Can any man imagine that this convention could at that time, have considered these rights as the grant of a King, whom they previously declared to have abdicated the throne, or the gracious concessions of a Prince whom they were about to deprive forever of the crown? Or could they have considered this bill of rights as the concession of Prince William, at that time a foreigner and alien, not entitled to hold a foot of land, or any of the common rights of citizenship, and who could afterwards only derive his title to the crown from the same source, which gave authority and sanction to this fundamental and most inestimable law? or, could the British nation at that time, or ever since, have viewed this declaration, as the grant and concession of a King or

Prince, when no King or Prince was at that time in existence?—But should there remain any minds yet unsatisfied, I refer such to the debates of that convention, which are preserved in Grey's debates in parliament,[4] and there will be found in them, the principles of equal liberty, the inherent and unalienable rights of men, as amply and ably discussed, and as fully recognized by the authors of that blessing, the artists of that British palladium, as ever they have since been by the animated patriots of America, or the present age.—I also refer them to an inestimable little treatise composed on this occasion by that accomplished lawyer and patriot, afterwards the Lord Somers—High Chancellor of Great-Britain—then a member of the convention, and chiefly instrumental in their great work—a pamphlet that should find a place in the library of every American judge at least[5]—Whoever peruses these, will discover undeniable evidence, that the British convention, considered this their declaration, as the concession of no Prince, but the Prince of Heaven—whom alone they acknowledged as the author of their liberties—they will there find that a bill of rights, is an enumeration of those conditions on which the individuals of the empire agreed to confirm the social compact; and consequently that no power, which they thus conditionally delegated to the majority (in whatever form organized) should be so exercised as to infringe and impair these their natural rights—not vested in SOCIETY, but reserved to each member thereof.

This was not the doctrine of that period alone—It was the common law and constitution of England, so asserted and maintained by the ablest lawyers of every age of the empire.—The petition of right, which came forward in the reign of Charles 1st, said to have been originally penned by the celebrated Lord Coke[6]—although in its title a contradiction in terms, is yet in substance equally strong and clear—asserting the rights of the people to be coeval with the government—We find this principle strenuously and ably maintained through all the works of this great man, and to this doctrine he finally, with the devotion of a freeman, and the fortitude of an Englishman, sacrificed his vanity, his ambition and his avarice—This last act of an aged and venerable judge, has obliterated the errors of a youthful courtier—it has made his peace with posterity, who with gratitude and indulgence has forgiven the conduct of a court lawyer, which she might have punished with detestation, although she could not correct.

Here I cannot but observe what strenuous bill of rights men, all the great luminaries of the English law have been: to Lord Coke and Lord Somers, I will add that [– – –] of human nature, Sir Matthew Hale,[7]

in whom were united true Christian piety, Roman fortitude, and an understanding more than human.

This perfect man although firmly opposed to the violences of the mad fanatics of the age, stood up almost alone in that parliament which restored the regal government, in favor of a bill of rights—but the tide of popular rage, hastening to place the worthless Charles on the throne of his more worthless ancestors, was too strong, and the voice of that man could not be heard, who was the delight of his own and the admiration of succeeding ages.

It is true, that something like the doctrine of Aristides was frequently the language of courtiers and sycophants in the feeble reigns of the arbitrary Stuarts—times of impotent and impudent usurpation—and they grounded their assertions on the form of the statute of magna charta, a statute much esteemed for the many valuable rights it ascertains—the enacting words of which imply it to be an act of the King—But Aristides must know that this was the frequent form of the ancient statutes, sometime it is the King alone enacts, sometime the King with advice and consent of the great men and Barons, and sometimes the three estates—Even at this day, the King uses these words in passing laws that bear the same implication; and we see even in America acts of authority issue under the name and signature of the Governor alone, who has not a voice unless the council are divided—But as to the legal and acknowledged authority of the King at the time of enacting magna charta, there can remain but little doubt. Henry Bracton[8] a cotemporary lawyer and judge, who has left us a compleat and able treatise on the laws of England, is thus clear and express—*Omnes quidem sub rege, ipse autem sub lege*, all are subject to the King, but the King is subject to the law—It will hardly then be imagined, that the supreme law and constitution were the grants and concessions of a Prince, who was thus in theory and practice, subject himself to ordinary acts of legislation—But all these things are so amply discussed and the authorities so accurately collected in the publication of my Lord Somers, that a reference must be much more satisfactory than a repetition.

If I understand Aristides, he says that it would have been considered as an arrogant usurpation of sovereign rights in the members of convention, to have affixed a bill of rights—Can he reconcile this position with another opinion in his remarks, where he maintains that in offering this constitution, they could only act as private individuals, any of whom have a right to propose a constitution to the Americans to adopt at their discretion—In this view they could only have proposed—it is certain they could not have enacted a bill of rights—Nor would there

have been any usurpation in WE *the people, of the States of New-Hampshire, Massachusetts, &c. securing to ourselves and our posterity the following unalienable rights, &c.* which is the stile of the new constitution—The convention have actually engrafted some of these natural rights, yet no one calls it an usurpation—nor can I believe that any of my fellow-citizens of the United States, would have discovered the least indignation, had they engrafted them all—The universal complaint has been that they have enumerated so few—But says Aristides, it would have been a work of great difficulty, if not impossible to have ascertained them—Are the fundamental rights of mankind at this day unknown? Are they so soon forgot? If they are not imprinted on our hearts, they are in several of the constitutions—Although various in form, they are certainly not contradictory in substance—It did not require the wisdom of a national convention to have reduced them into order, and such as would not have gained the suffrage of a majority, would never have been regretted by America—or, I will venture to assert, what I shall never believe, that the majority were very unworthy of the trust reposed in them—Nor yet can I believe, that the late convention were incompetent to a task that has never been undertaken in the separate States without success.

This constitution is to be the act of the individual members of the American empire—the highest source of terrestial power with us—As it is a subsequent act, it not only repeals all prior acts of the same authority where it interferes with them—But being a government of the people of all the States, I do not know what right the citizens of Maryland for instance, have to expect that the citizens of Connecticut or New-Jersey, will be governed by the laws or constitution of Maryland—or what benefit a citizen of Maryland could derive from his bill of rights in a court of the United States, which can only be governed by the constitution and laws of the United States—Nor will it help the question to say, what will certainly be denied, that the future Congress may provide by law for this,—that an ordinary law of the United States can make, is an admission that it can unmake, and to submit the bills of rights of the separate State[s] to the power of every annual national parliament, is a very uncertain tenure indeed.

If a citizen of Maryland can have no benefit of his own bill of rights in the confederal courts, and there is no bill of rights of the United States—how could he take advantage of a natural right founded in reason, could he plead it and produce Locke, Sydney, or Montesquieu as authority? How could he take advantage of any of the common law rights, which have heretofore been considered as the birthright of Englishmen and their descendants, could he plead them and produce the authority of the English judges in his support? Unquestionably not, for

the authority of the common law arises from the express adoption by the several States in their respective constitutions, and that in various degrees and under different modifications—If admitted at all, I do not see to what extent, and if admitted, it must be admitted as unalterable by ordinary acts of legislation, which would be impossible—and it could never be of use to an individual, but in combating some national law infringing natural right.—To render this more intelligible—suppose for instance, that an officer of the United States should force the house, the asylum of a citizen, by virtue of a general warrant, I would ask, are general warrants illegal by the constitution of the United States?[9] Would a court, or even a jury, but juries are no longer to exist, punish a man who acted by express authority, upon the bare recollection of what once was law and right? I fear not, especially in those cases which may strongly interest the passions of government, and in such only have general warrants been used—Suppose a case that must and will frequently happen, for such happen almost daily in England—That an officer of the customs should break open the dwelling, and violate the sanctuary of a freeman, in search for smuggled goods—impost and revenue laws always are and from necessity must be in their nature oppressive—in their execution they may and will become intolerable to a free people, no remedy has been yet found equal to the task of detering and curbing the insolence of office, but a jury—It has become an invariable maxim of English juries, to give ruinous damages whenever an officer has deviated from the rigid letter of the law, or been guilty of any unnecessary act of insolence or oppression—It is true these damages to the individual, are frequently paid by government, upon a certificate of the judge that there was probable cause of suspicion—But the same reasons that would induce an English judge to give this certificate, would probably lead an American judge, who will be judge and jury too, to spare the public purse, if not favour a brother officer.

I could proceed with an enumeration of familiar instances that must and will happen, that would be as alarming as prolix: but it is not my intention to ring an alarm bell—If I know myself I would rather conciliate than divide—But says Aristides the government may establish rules for such causes though not commanded; what they will do I will not presume to say; but I can readily and will hereafter prove[10] that if they do, they will violate the constitution; and even admitting their power, it would be but a slender thread to hang so great a stake upon.

Here I must meet a position that has been ingeniously advanced—That all powers and rights not expressly given, are consequently reserved—If this is not downright political nonsense, it is at least, untrue

in theory and impossible in practice—until man is gifted with one of the most important attributes of the Deity—that of foreknowledge and prophecy—it will be impossible to limit *affirmatively* legislative power—When a people part with the legislative power to government, they can no more say, you shall make such and such laws, than they can say, such and such events shall happen—laws must be regulated by events—All the precaution that is left to human wisdom, is the exertion of a *negative limitation*, speaking thus in the language of a bill of rights, no event shall authorize, no plea of necessity shall justify the legislature in making a law to abolish or infringe the freedom of the press, or the liberty of conscience, &c.—And even when these bounds are expressly and clearly assigned, we have to lament that they do not always prove an effectual safeguard against the power of government; but they are the only guard, and why shall we leave our citizens totally defenseless? A gentleman in the Pennsylvania convention, of considerable reputation, said, that the form of the constitution—the organization of power, is a bill of rights—he had then a very sensible, but unformed idea floating in his imagination, he however, expressed it inaccurately, and unfortunately got on the wrong side of his own question.[11] A proper organization of power would most probably prevent a violation of a bill of rights and prove the best security of political liberty. Such an organization is nothing more than a good machine, a mint or die, that will make money in its proper form, but the quantity of alloy must be regulated by law, or the people may be cheated by a debased currency—The truth is, that the rights of individuals are frequently opposed to the apparent interests of the majority—For this reason the greater the portion of political freedom in a form of government the greater the necessity of a bill of rights—When the natural rights of an individual are opposed to the decided interests or heated passions of a large majority of a democratic government; if these rights are not clearly and expressly ascertained, the individual must be lost; and for the truth of this I appeal to every man who has borne a part in the legislative councils of America. In such governments the tyranny of the legislative is most to be dreaded.—In monarchical governments, the feelings of the majority will be most frequently on the side of the individual from the general jealousy inseperably attendant on those forms of government, where the tyranny of the executive prevails. All tyranny whether exercised in the garb of a despot, or the plain coat of a quaker, is equally detestable, and should be guarded against.

If a bill of rights was that essential requisite to a good constitution, why was it omitted by a convention of the ablest men in America, a large majority of whom were unquestionably well disposed? This has

been a natural inquiry, and perhaps the true reason yet remains to be disclosed. I have been informed that the proposed constitution was carried through it several stages, in a very inoffensive form to the last, and that it did not assume its decided features until the days before the convention rose—the changes then effected, produced much difference of opinion—created some warmth, and their patience was too much exhausted to make the necessary correspondent alterations and additions. Those facts may, I believe, be depended on, but the inference is only offered as conjecture—if true, we may attribute the omission of a bill of rights, and many other imperfections to fatigue rather than design.

From the foregoing observations, many will conclude that I am the determined foe to the new constitution—I am neither its concealed or open enemy—Sorry I am to say that I cannot in its present state be its advocate or friend—That it is as far preferable to the present existing confederation (considered as a national government) as substance is preferable to form, is a truth I have as little doubt of, as of its very numerous defects.—The true and only question is, whether any national government whatever, ought to be prefered to a league or confederacy administered by a diet, or congress of diplomatic deputies—And this is a question that will continue to divide the ablest and best men in America—the misfortune is, that experience alone will decide a doubt, which perhaps no theory is competent to solve—But that the proposed confederal constitution, cannot be considered as such a diplomatic assembly must appear to all men—It is a national government, and a league between independent States compounded—One of those mixtures of heterogeneous qualities that will forever produce a neutral—a caput mortuum[12]—consequently the present Congress is already found to be, but the *carcase* of a government, and a rotten carcase too.—The momentous subject has led me farther than I intended—My remarks will discover the hurry in which they were written—Had I leisure I would censure freely those defects in the proposed system, that must be amended, for I have strong doubts whether it can be administered in its present form—In doing this I should, I am persuaded, convince the public that Aristides has generally erred and frequently mistated in his remarks—that he has done so intentionally I neither believe myself or would wish the public to believe—to err is the common portion of humanity—and to be misinformed the frequent misfortune of ARISTIDES and

A FARMER.

1. For the passage in "Aristides'" *Remarks* that raised the ire of "A Farmer" and caused him to chide Alexander Contee Hanson's use of the pseudonym "Aristides" for which

he was well known, see *Remarks*, 31 January (RCS:Md., 254). (''A Farmer'' repeated this charge in ''A Farmer'' VI, Baltimore *Maryland Gazette*, 1 April [RCS:Md., 464].) Hanson defended himself in ''Aristides,'' *Maryland Journal*, 4 March (extra) (RCS:Md., 357).

2. For passages in *Remarks* in which ''Aristides'' actually wrote about a bill of rights, see ''Aristides,'' *Remarks*, 31 January (BoR, II, 297–301). As ''Aristides,'' Hanson responded to what he believed were ''A Farmer's'' misrepresentations of statements found in *Remarks* (*Maryland Journal*, 4 March [extra] [BoR, II, 359–64]). In turn, ''A Farmer'' replied in his sixth essay (Baltimore *Maryland Gazette*, 1 April [BoR, II, 394–96]).

3. Filmer (c. 1588–1653) advanced the doctrine that rights originated with sovereigns in the posthumously published *Patriarcha: Or The Natural Power of Kings* (London, 1680), 128.

4. For a detailed discussion of the debates that took place in the Convention Parliament on this question in January and February 1689, see Lois G. Schwoerer, *The Declaration of Rights, 1689* (Baltimore and London, 1981), 171–231. ''A Farmer'' is referring to Anchitell Grey, *Debates of the House of Commons, From the Year 1667 to the Year 1694* (London, 1763), IX, 1–81.

5. See John Somers (1651–1716), *A Vindication of the Proceedings of the Late Parliament of England. An. Dom. 1689* . . . (London, 1690).

6. The Petition of Right (1628), which specified subjects' liberties that the king could not violate, was drawn up by a committee of the English House of Commons. Edward Coke (1552–1634) was largely responsible for its content. Both houses of Parliament agreed to the petition and sent it to King Charles I, who assented under considerable pressure.

7. Mathew Hale (1609–1676) was known as perhaps the most pious, independent, learned, impartial, honorable, and incorruptible judge of his time.

8. A reference to Henry de Bracton (d. 1268) and his treatise *On the Laws and Customs of England*, which was published in Latin for the first time in 1569.

9. ''Aristides'' replied in the *Maryland Journal* on 4 March (extra) (BoR, II, 361–62).

10. See ''A Farmer'' IV, Baltimore *Maryland Gazette*, 21 March (RCS:Md., 408–12).

11. ''A Farmer'' is probably referring to Thomas McKean, chief justice of the Pennsylvania Supreme Court, who on 28 November, as a delegate to the Pennsylvania Convention, commented that a separate bill of rights was unnecessary ''for, in fact, the whole plan of government is nothing more than a bill of rights—a declaration of the people in what manner they choose to be governed'' (BoR, II, 154).

12. Latin: A dead head, a skull, or a worthless residue; dead or obsolete.

New York Journal, 15 February 1788

A correspondent who has seen the amendments[(a)] which accompany the ratification of the new constitution, by the state of Massachusetts, is highly pleased to find, that they are so materially altered from those first proposed by Governour Hancock,[1] and flatters himself, that it is the wish of every *honest* and *disinterested* citizen of this state, that the convention may, when the new constitution is fairly and fully discussed, propose the same, and further amendments, if judged proper, to accompany their ratification; and that the constitution should not take place, unless those amendments were agreed to by the first Congress under the new government.

(a) The amendments, as altered and ratified, referred to by our correspondent, will be inserted tomorrow.

1. For the amendments proposed by the Massachusetts Convention on 6 February, see BoR, I, 243–45n. For those originally proposed by John Hancock on 31 January, see RCS:Mass., 1381–82.

From George Nicholas
Charlottesville, Va., 16 February 1788 (excerpt)[1]

. . . We also assert to you as a fact that if the new government shall take place the ~~bulk of the~~ people of Virginia will part with no more power than they have done already, and that Congress and the legislature of the state will together have no greater power or authority than the present Congress and the legislature of the state now possess: and the only difference will be that of the powers already parted with by the people, under the new government Congress will have a greater share and the legislature of the state less than they now respectively enjoy. Thus the bulk of the people will be greatly benefited because without their parting with any greater share of their natural rights and privileges they will live under a government which will be much better calculated to secure their welfare and prosperity than the one under which they now live. and you may find that it is only a dispute about who shall have the power already given away by the people and that the great men in the different states will be the only sufferers by the change.

But suppose there are some imperfections in the government that is offered are we never to have one until such as is perfect can be obtained. All human works are imperfect and we may reasonably suppose that one in which the interests of thirteen states were to be considered may be so too; but the way to know that certainly is to put it to the proof; if it contains errors it also has in itself the seeds of reformation by which those errors may be rectified[.] For the constitution expressly declares that whenever the legislatures of two thirds of the several states shall make application to Congress for that purpose they shall call a convention for proposing amendments which when ratified by three fourths of the states shall become part of this constitution. We are convinced that we can get no better government at this time and that we must adopt the one now offered or submit to see America disunited and a prey to foreign and domestic tyranny. It confirms us in this opinion when we find that the man upon earth whose judgment as well as integrity we have the greatest deference for entertains the same sentiments; Genl. Washington in a letter to Mr Charles Carter speaks thus upon this subject:

here insert his letter.[2] . . .

1. FC, Reuben T. Durrett Collection, George Nicholas, Department of Special Collections, University of Chicago Library. For the entire piece, see RCS:Va., 369–75n. This manuscript, in the handwriting of George Nicholas, appears to be a draft of a letter that went through at least one revision. It is addressed to "Sir" and the closing in the first draft reads "I am Sir, Yr. friend and hum: servt." In revising the draft, Nicholas changed all of the pronouns "I" to "we" and the closing to "We are Sir, Yr. friends and hum: servts." Thus, this manuscript became, at least outwardly, the product of multiple authorship.

A second possibility is that the manuscript is a draft of a speech to be delivered on 13 March at the Albemarle County election for delegates to the state Convention. Nicholas and his brother Wilson Cary Nicholas were elected to represent Albemarle in the state Convention, where both voted to ratify the Constitution. A third possiblity is that the manuscript was intended for publication in a newspaper. This is suggested by the next to the last paragraph in the essay: "If you consider these observations as worthy of notice you will oblige us by communicating them to your neighbours." Parts of this manuscript are similar to sections of "The State Soldier" IV, *Virginia Independent Chronicle*, 19 March (RCS:Va., 509–15).

2. See "George Washington on the Constitution," 27 December 1787–20 February 1788 (RCS:Va., 276–81).

Baltimore Maryland Gazette, 19 February 1788

Extract of a letter from New-York, dated 11*th inst.*

"Accounts from Boston remove all doubts with respect to the fate of the government. Mr. Hancock, after a long confinement with the gout, made his appearance in Convention on Thursday the 31st. ult. assumed his seat as President, and declared himself in favour of adopting the proposed plan as it now stands; but that he should propose amendments to be introduced in the way pointed out by that Constitution after it takes place.—His amendments are 1st,—That all powers not expressly granted are retained. 2d,—That the New Government shall not levy direct taxes, unless the imposts are insufficient, &c. &c.—Last Tuesday was appointed for the final decision of the question, which we expect by Wednesday's post."

Marcus I

Norfolk and Portsmouth Journal, 20 February 1788 (excerpts)

"Marcus," a response to George Mason's objections to the Constitution (BoR, II, 28–31), was written by James Iredell. Throughout the 1780s, Iredell opposed the issuance of paper money, the banishment of Loyalists and confiscation and sale of their property, and the refusal of North Carolina to honor the provisions of the Treaty of Peace concerning debts owed by Americans to British subjects and Loyalists.

In November 1787 Iredell had written the resolutions of the Chowan and Edenton meeting and the presentment of the Edenton grand jury (see RCS: N.C., 20–22, 22–25n). In July 1789 he described some of the feelings that

motivated his writings on the Constitution, including "Marcus": "My Zeal I fear far outran my discretion, for I was fully convinced in my own mind that the fate of America depended on the adoption of the Constitution in that particular period, and I had long been ashamed of the disgraceful light in which we appeared, not only to every other Country in the world, but even to ourselves" (to Baron de Poellnitz, 25 July 1789, RCS:N.C., 665). In all likelihood, this feeling led him to accept his only elective office—delegate to the Hillsborough Convention—where, along with Archibald Maclaine and Governor Samuel Johnston, he led Federalists in their unsuccessful attempt to ratify the Constitution in July and August 1788.

George Mason's objections to the Constitution, based on his criticisms in the Constitutional Convention, were originally published in the *Massachusetts Centinel*, 21 November, the *Virginia Journal*, 22 November, and the Winchester *Virginia Gazette*, 23 November (CC:276). They were widely reprinted in newspapers, in a magazine, in two pamphlet anthologies, and as a broadside. The *Massachusetts Centinel* version, which had a wider circulation and was used by "Marcus," omitted Mason's objection to the constitutional provision allowing a simple majority of Congress to enact commercial legislation. The omission was noted in some newspapers, but "Marcus" never mentioned or answered this objection.

On 13 February John M'Lean, printer of the weekly *Norfolk and Portsmouth Journal*, received Iredell's manuscript. Two days later M'Lean received "some material omissions respecting it." These omissions were "strictly attended to and inserted in their proper place." The manuscript, dated "*January* 1788," was accompanied by "an half Joe for four Books of the Federalist" and a subsidy for printing the manuscript. (The New York City firm of John and Archibald M'Lean published *The Federalist*. An advertisement in the *Norfolk and Portsmouth Journal*, published in January, announced that the printer was taking subscriptions for *The Federalist* at a cost of one dollar.) A "half Joe" was equal to eight dollars. Thus, Iredell paid M'Lean four dollars for *The Federalist* and four dollars to publish "Marcus." M'Lean informed Iredell that the length of the manuscript would force him to omit some advertising and that he was publishing "Marcus" in preference to "Several other political pieces [that] have been also sent for Appearance in my next, but defective of Marcus' Merit and Argument." Because of these factors, M'Lean had "no doubt" that Iredell would make further payments to compensate him for "the Attention and pecuniary disadvantages" of publication (M'Lean to Iredell, 15 February, RCS:N.C., 68–69).

M'Lean published the first of five unnumbered installments of "Marcus" in the *Norfolk and Portsmouth Journal* on 20 February; the subsequent installments appeared on 27 February, 5, 12, and 19 March (RCS:N.C., 70–79n, 79–85, 87–92n, 93–102, 102–6). The essay was reprinted in at least one North Carolina newspaper, but no copies are extant (see Iredell to Baron de Poellnitz, 15 April, RCS:N.C., 146–47n). The essay, without the author's preface, was reprinted as a pamphlet by Hodge and Wills of New Bern. On 27 March, the printers advertised the sale of the pamphlet for two-and-a-half shillings in their newspaper, the *State Gazette of North Carolina*. (Earlier advertisements might have appeared in no-longer-extant issues.) The twelve-page pamphlet, also contain-

ing "Publicola" by Archibald Maclaine (RCS:N.C., 106–18n), is entitled, *Answers to Mr. Mason's Objections to the New Constitution Recommended by the Late Convention at Philadelphia. By Marcus. To Which Is Added, An Address to the Freemen of North-Carolina. By Publicola* (Evans 45276). There are no significant differences between the newspaper and pamphlet versions of "Marcus." A copy of the pamphlet at Harvard University is annotated and corrected by James Iredell.

David Witherspoon, a New Bern lawyer, praised the essay in a letter to Iredell on 3 April: "I have read with very great pleasure your answers to Mr. Masons objections, and surely every man who reads them & on whom Mr. Masons observations or indeed the arguments of those in opposition in general have had any effect, must be convinced that the objections to the constitution are without foundation. . . . Your publication has been made, I believe very correctly by Mr. Hodge I was sorry that my business called me out of town while it was in hand You were very soon known to be the author by what means I do not know" (RCS:N.C., 141–42n).

For the full essay, see RCS:N.C., 70–79n.

MR. M'LEAN, *I beg the favour of you to publish in your paper, the following Answers to Mr. Mason's Objections to the New Constitution. Each objection is inserted in his own words (as taken from a printed newspaper) before the answer given to it, so that the merits of both will be fairly before the Public.—Nothing can be more easy than the business of objecting, and as mankind are generally much more apt to find fault than to approve its success is commonly proportionable; but I trust the good sense of America, at this awful period, will exert itself to judge coolly and impartially, especially as the dissenting gentlemen appear to differ as much from each other as from the respectable majority who have recommended the New Constitution to the public.—I am Sir, your very humble servant,*

The AUTHOR.

Answers to Mr. Mason's *Objections* to the New Constitution, Recommended by the late Convention at Philadelphia.

1st. Objection.

"There is no declaration of rights, and the laws of the general government being paramount to the laws and constitutions of the several States, the declarations of rights in the separate States are no security; nor are the people secured even in the enjoyment of the benefit of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several States."

Answer.

1. *As to the want of a Declaration of Rights.*

The introduction of these in England, from which the idea was originally taken, was in consequence of usurpations of the Crown, contrary, as was conceived, to the principles of their government. But there, no

original constitution is to be found, and the only meaning of a declaration of rights in that country is, that in certain particulars specified, the Crown had no authority to act. Could this have been necessary, had there been a Constitution in being, by which it could have been clearly discerned whether the Crown had such authority or not? Had the people by a solemn instrument delegated particular powers to the Crown at the formation of their government, surely the Crown which in that case could claim under that instrument only, could not have contended for more power than was conveyed by it. So it is in regard to the new Constitution here: The future government which may be formed under that authority, certainly cannot act beyond the warrant of that authority. As well might they attempt to impose a King upon America, as go one step in any other respect beyond the terms of their institution. The question then only is, whether more power will be vested in the future government than is necessary for the general purposes of the Union. This may occasion a ground of dispute–but after expressly defining the powers that are to be exercised, to say that they shall exercise no other powers (either by a general or particular enumeration) would seem to me both nugatory and ridiculous. As well might a Judge when he condemns a man to be hanged, give strong injunctions to the Sheriff that he should not be beheaded.[(a)]

2. As to the common law, it is difficult to know what is meant by that part of the objection. So far as the people are now entitled to the benefit of the common law, they certainly will have a right to enjoy it under the new constitution, till altered by the general Legislature, which even in this point has some cardinal limits assigned to it. What are most acts of Assembly but a deviation in some degree from the principles of the common law? The people are expressly secured (contrary to Mr. Mason's wishes) against *ex post facto* laws, so that the tenure of any property at any time held under the principles of the common law, cannot be altered by any act of the future general legislature. The principles of the common law, as they now apply, must surely always hereafter apply, except in those particulars in which express authority is given by this Constitution; in no other particular can the Congress have authority to change it, and I believe it cannot be shewn that any one power of this kind given is unnecessarily given, or that the power would answer its proper purpose if the Legislature was restricted from any innovations on the principles of the common law, which would not in all cases suit the vast variety of incidents that might arise out of it. . . .

(*a*) It appears to me a very just remark of Mr. Wilson in his celebrated speech,[1] that a Bill of Rights would have been

dangerous, as implying that without such a reservation the Congress would have authority in the cases enumerated, so that if any had been omitted (and who would undertake to recite all the state and individual rights not relinquished by the new Constitution?) they might have been considered at the mercy of the general Legislature. . . .

1. For James Wilson's speech on 6 October, see BoR, II, 25–28.

The Impartial Examiner I
Virginia Independent Chronicle, 20 February 1788 (excerpt)[1]

To the free people of VIRGINIA.

Countrymen and Fellow-Citizens, . . .

. . . This, Virginians, will be your mighty, your enviable situation after all your struggles for independence! and, if you will take the trouble to examine, you will find that the great, the supereminent authority, with which this instrument of union proposes to invest the fœderal body, is to be created without a single check—without a single article of covenant for the preservation of those inestimable rights, which have in all ages been the glory of freemen. It is true, "the United States shall guarantee to every state in this union a republican form of government:" yet they do not guarantee to the different states their present forms of government, or the bill of rights thereto annexed, or any of them; and the expressions are too vague, too indefinite to create such a compact by implication. It is possible that a "republican form" of government may be built upon as absolute principles of despotism as any oriental monarchy ever yet possessed. I presume that the liberty of a nation depends, not on planning the frame of government, which consists merely in fixing and delineating the powers thereof; but on prescribing due limits to those powers, and establishing them upon just principles.

It has been held in a northern state by a zealous advocate for this constitution that there is no necessity for "a bill of rights" in the fœderal government; although at the same time he acknowledges such necessity to have existed when the constitutions of the separate governments were established. He confesses that in these instances the people "invested the[i]r representatives with every power and authority, which they did not in explicit terms reserve:" but "in delegating federal powers," says he, "every thing, which is not given, is reserved."[2] Here is a distinction, I humbly conceive, without a difference, at least in the present enquiry. How far such a discrimination might prevail with respect to the present system of union, it is immaterial to examine; and had

the observation been restrained to that alone, perhaps it might be acknowledged to contain some degree of propriety. For under the confederation it is well known that the authority of Congress cannot extend so far as to interfere with, or exercise any kind of coercion on, the powers of legislation in the different states; but the internal police of each is left free, sovereign and independent: so that the liberties of the people being secured as well as the nature of their constitution will admit; and the declaration of rights, which they have laid down as the basis of government, having their full force and energy, any farther stipulation on that head might be unnecessary. But, surely, when this doctrine comes to be applied to the *proposed* fœderal constitution, which is framed with such large and extensive powers, as to transfer the individual sovereignty from each state to the *aggregate body,*—a constitution, which delegates to Congress an authority to interfere with, and restrain the legislatures of every state—invests them with supreme powers of legislation throughout all the states—annihilates the separate independency of each; and, in short—swallows up and involves in the plenitude of its jurisdiction all other powers whatsoever:—I shall not be taxed with arrogance in declaring such an argument to be fallacious; and insisting on the necessity of a positive unequivocal declaration in favor of the rights of freemen in this case even more strongly than in the case of their separate governments. For it seems to me that when any civil establishment is formed, the more general its influence, the more extensive the powers, with which it is invested, the greater reason there is to take the necessary precaution for securing a due administration, and guarding against unwarrantable abuses.

1. On 23 January the printer of the *Virginia Independent Chronicle* announced that "Impartial Examiner" had been received. "The Impartial Examiner" published two essays—the first in three installments on 20, 27 February (RCS:Va., 420–24) and 5 March (BoR, II, 364–66), and the second on 28 May (RCS:Va., 885–89). Each of the three parts of the first number is headed "*The impartial* EXAMINER," but the third part is signed "P. P." For the full essay, see RCS:Va., 387–94.

2. For James Wilson's speech of 6 October 1787, see BoR, II, 25–28.

Alexander White
Winchester Virginia Gazette, 22 February 1788 (excerpts)

The Pennsylvania Convention adjourned on 15 December 1787, and three days later twenty-one of the twenty-three delegates who had voted against ratification of the Constitution published their reasons of dissent in the *Pennsylvania Packet.* This lengthy document reviewed the many arguments against adopting the Constitution, attacked the Constitutional Convention for its secrecy, and accused the delegates of violating their instructions by adopting a new constitution. The "Dissent" criticized Pennsylvania Federalists for the

precipitate, threatening, and highhanded manner in which they had obtained the ratification of the Constitution. And it included a list of fourteen amendments to the Constitution that the Federalist majority in the Pennsylvania Convention had not permitted to be entered on the journals (BoR, I, 241–42). On 4 January 1788 Augustine Davis reprinted the "Dissent" in Richmond as a twenty-four-page pamphlet (Evans 20621), and between 1 February and 14 March, the Winchester *Virginia Gazette* reprinted it in six installments (excluding the issue of 29 February). It is also possible that some of the "many thousand copies" of broadsides and pamphlets distributed by Pennsylvania Antifederalists reached Virginia. (For the text, authorship, circulation, and impact of the "Dissent," see BoR, II, 197–203n, and CC:353.)

On 8 and 15 February the Winchester *Virginia Gazette* announced: "Preparing for the Press, and will shortly be published, Strictures on the Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania, to their Constituents; in which their gross misrepresentations of Facts, their fallacious Reasoning, and opprobrious Language will be exposed by ALEXANDER WHITE." On the 15th "Dares" criticized White for his lack of modesty in announcing the publication of his essay which "Dares" believed "promises vastly to enrich the vocabulary of Billingsgate" at the expense of "a most respectable Minority." "Dares" also suggested: "Perhaps Mr. White looks forward for his reward on the Continental Bench, or does he take this way to revenging himself on the public, for not attending his weighty arguments at the Winchester town meeting?" (RCS:Va. Supplement, 30–32. For the meeting in Winchester, see "Frederick County Meeting," 22 October, RCS:Va., 91–93n.)

The Winchester *Virginia Gazette* printed White's essay in two parts on 22 and 29 February. The second part was printed to the exclusion of the "Dissent of the Minority of the Pennsylvania Convention," as well as "several domestic occurrences, advertisements &c.," so that the essay would appear "previous to the ensuing election" of Frederick County's state Convention delegates on 4 March (Winchester *Virginia Gazette*, 29 February). In the issue of the 29th the *Gazette* also carried "Dion's" attack on White. "Dion" accused White of not having fought for his country during the War for Independence. He was surprised that White, a man of "notorious *timidity*," had written such an attack. "Dion" recommended to the printer that after he completed the publication of White's essay that he "reserve a place" in his paper for "a short 'essay on *patriotism*, with the superior advantages of professing it, in times of *profound peace*; to which will be annexed, intrepidity, or the art of attacking respectable characters, at the *secure* distance of 200 miles'" (RCS:Va. Supplement, 35).

Lastly, on the 29th the *Gazette* printed White's response to "Dares" (dated 18 February) in which he dismissed "Dares's" criticisms. White was also distressed that the upcoming election of state Convention delegates in Frederick County might not be "conducted with candour," as he had been assured it would be (*ibid.*, 34–35n).

The "Dissent of the Minority of the Pennsylvania Convention" appears to have helped Antifederalists. A writer declared in the Winchester *Virginia Gazette* on 19 March that "It is the opinion of the most observing politicians, that the Minority of Pennsylvania, by their vague 'Reasons of Dissent,' and the consequent inflammatory publications, have done more real injury to the proposed

Federal Constitution, than the whole combined force of anti-federals, throughout the United States.''

For the entire essay, see RCS:Va., 401–8n.

To the CITIZENS of VIRGINIA.

Friends and Countrymen, . . .

. . . There are notwithstanding some things in the address which may deserve consideration; these I shall endeavour to answer in the manner best calculated to cast light on the whole subject, without regard to the order in which they occur. There are other things so clearly out of the power of Congress, that the bare recital of them is sufficient, I mean the ''rights of conscience, or religious liberty—the rights of bearing arms for defence, or for killing game—the liberty of fowling, hunting and fishing—the right of altering the laws of descents and distribution of the effects of deceased persons and titles of lands and goods, and the regulation of contracts in the individual States.'' These things seem to have been inserted among their objections, merely to induce the ignorant to believe that Congress would have a power over such objects and to infer from their being refused a place in the Constitution, their intention to exercise that power to the oppression of the people. But if they had been admitted as reservations out of the powers granted to Congress, it would have opened a large field indeed for legal construction: I know not an object of legislation which by a parity of reason, might not be fairly determined within the jurisdiction of Congress.

The freedom of speech and of the press, are likewise out of the jurisdiction of Congress.—But, if by an abuse of that freedom I attempt to excite sedition in the Commonwealth, I may be punished—should I be unjustly accused of such an offence, the trial by a jury of my countrymen is my security—if what I have said or wrote corresponds with their general sense of the subject, I shall be acquitted. The extraordinary supposition of the dissentients, that a prosecution for a libel may be construed an action of debt, only shews how far they are willing to degrade themselves, in order to inflame the minds of the people. They attempt to alarm you by a direful train of evils which Congress MAY do. They MAY command the whole or any part of your property by taxes and imposts; they MAY monopolize every source of revenue, and thus demolish the State Governments; they MAY prolong their existance in office for life, by postponing the times of elections and appointments, and having gained that point, may fill up vacancies themselves, and MAY depute some body in the respective States to fill up vacancies of Senators, until they can venture to assume it themselves, and finally complete the system of despotism by continuing themselves and their children in the government. How are they to accomplish

these things? Will they possess a magical power? if they proceed according to the course of human affairs, they must commence their operations by levying taxes, for without these, armies can neither be raised nor maintained. Now we find that the State Governments, formed by the unanimous consent of the people, their acts supported by the sanction of Congress and the influence of a numerous representation, have scarcely vigor to collect the taxes imposed by them, although those taxes have never been sufficient for the support of the peace establishment, How much more difficult will it be for Congress, by their officers to levy taxes, to make good the deficiencies already incurred by the delinquencies of the States, and at the same time to raise a military force sufficient to enslave you? should they attempt a change of government without such force, their acts would be disregarded, the constitution itself having pointed out the mode by which alone a change may be made. Should they contrary to all probability, by any regulations of theirs, prevent elections taking place in due time, the federal body would dissolve with the expiration of the time for which the members then in being were elected—Congress would become a felo de se[1] and the States remain supreme and independent. I may be told that such things have been done in other nations; but those nations were very differently circumstanced; in those nations were supreme legislatures, which possessed, or were supposed to possess, powers adequate to the purpose; and no other bodies of men possessing legislation and executive powers capable of collecting the force of the people to oppose such arbitrary measures. Revolutions unfavourable to liberty, though sanctioned by the name of legislative acts, have generally been brought about by coercion. A moderate force in the hands of a prince, a commander in chief, or a president, may be sufficient, where the supreme power is collected in one place, but this is not the case in America. Congress has no pretensions to such a power; any act of theirs for changing the government, however obtained, would be considered as void. All the States must be acted upon at the same time, and no exigence of affairs can ever afford a plausible pretext for supporting an army adequate to that purpose; hence our great security, and hence the advantage of a federal, over a consolidated government. But can you seriously believe, that a Congress, chosen by yourselves from among yourselves, without distinction of birth or fortune, and who at stated times must return to the body of the people, would really wish to enslave you, themselves, and millions yet unborn. The supposition has no foundation in the nature of things. On the contrary, where the people have had the choice of their rulers, although that choice has been

confined to a particular order of men, they have not only preserved their liberties, but improved them. . . .

(To be continued.)

1. Medieval Latin: To commit suicide.

Richard Henry Lee to James Gordon, Jr.
Chantilly, Westmoreland County, Va., 26 February 1788 (excerpt)[1]

Captain Merry delivered me the letter that you were pleased to write me, on the 11th instant,[2] in which I find you propose the following questions, relative to the new constitution, proposed by the late general convention, and request my answer to them:

First. Whether the United States had not better receive than reject the said constitution?

Secondly. Whether it would not injure our credit in the European world, if we were to dissent therefrom; and whether our country would not thereby be endangered, as there are large demands in Europe against us?

Thirdly. Whether every objection to the plan may not, by instructions from the different states, be made as soon as the said Congress may be assembled?

Fourthly. Whether ruin would await us, unless we are consolidated in one general plan of government?

To the first question, namely, "Whether the United States," &c. I answer, that this question implies a *necessity* of either adopting or rejecting. But I know of no power on earth that has, or ever had, a right to propose such a question of extremity to the people, or any part of the people, of the United States. The happiness or misery of mankind depends so essentially upon government, that, when this is to be established by the people for themselves and their posterity, the right of the people cannot be questioned, of so acting with plans proposed, as to adopt them, reject them, or propose amendments to them.

To the second query, "Whether it would not injure," &c. I reply, that this second question is much founded on the first; and, so far as it is, may receive the same answer. It is divisible into two parts; the first, shall our credit be injured in Europe by *dissenting* from the proposed plan? It is presumable, that credit abroad depends much upon union and happiness at home, as it must always greatly do upon that industry and real strength which grows out of the possession of civil liberty. Those, therefore, who contend for the new plan, by propounding such a question, should prove, in the first place, that the adoption of this consti-

tution will secure union and happiness at home, and those valuable consequences that flow from the possession of civil liberty; and this is the more necessary, as there are such numbers who think that the proffered plan, if admitted without amendments, will empower the administrators of the new government to destroy civil liberty. . . .

1. Printed: Richard H. Lee, *Memoir of the Life of Richard Henry Lee and His Correspondence* . . . (2 vols., Philadelphia, 1825), II, 84–86. For the entire letter, see RCS:Va., 417–20. Chantilly was Lee's plantation in Fairfax County. Gordon (1759–1799), an Orange County planter, represented Richmond County in the Virginia House of Delegates, 1782–84, and Orange, 1788–89. He also represented Orange in the state Convention, where he voted to ratify the Constitution.

2. Not located.

Joseph Spencer to James Madison
Orange County, Va., 28 February 1788 (excerpts)[1]

. . . [Enclosure][2]

According, to your request, I here send you my objections to the *Fœderal Constitution*, which are as follows,

1st. There is no Bill [of] Rights, whenever Number of men enter into a State of Socity, a Number of individual Rights must be given up to Socity, but there should always be a memorial of those not surrendred, otherwise every natural & domestic Right becomes alianable, which raises Tyranny at once, & this is as necessary in one Form of Goverment as in another. . . .

8ly. We have no assurance that the liberty of the press will be allowed under this Constitution. . . .

10ly. What is dearest of all—*Religious Liberty*, is not Sufficiently Secured, No religious test is required as a Qualification to fill any office under the United States, but if a Majority of Congress with the presedent favour one Systom more then another, they may oblige all others to pay to the Support of their System as Much as they please, & if Oppression dose not ensue, it will be owing to the Mildness of Administration & not to any Constitutional defense, & if the Manners of People are so far Corrupted, that they cannot live by republican principles, it is Very Dangerous leaving religious Liberty at their Marcy—

1. RC, Madison Papers, DLC. For the entire letter, see RCS:Va., 424–27n. Spencer wrote the date "Feby. 26th 1788" under his signature, and Madison endorsed the letter "Joseph Spencer/Feby. 26. 1788." Nevertheless, the letter is placed under 28 February, the date appearing at the top of the letter. Spencer addressed the letter "To the care of Mr. F Murey [Maury]/in Fredricksburg," expecting Madison to pass through Fredericksburg on his way home to Orange County from Congress in New York City.

2. The enclosure is in Spencer's handwriting. At the end of these objections, Spencer wrote: "Revd. John Leeland's Objections to the Federal Constitution Sent to Col. Thos. Barber by his Request, a Coppy taken by Jos. Spencer, entended for the Consideration of Capt Jas. Walker Culpeper."

Alexander White

Winchester Virginia Gazette, 29 February 1788 (excerpts)[1]

To the CITIZENS of VIRGINIA.

(*Continued from our last.*)

Friends and Countrymen, It is objected that there is no Bill of Rights—a clear understanding of that matter will obviate many objections. A Bill of Rights is only necessary, where the rights of different men or orders of men are uncertain, and is rather calculated to inform than to restrain. Paper chains are too feeble to bind the hands of tyranny or ambition. In England the king claimed supreme power, as inseperably annexed to the kingly office, the people claimed privileges, these different claims occasioned many contest[s], until they were defined by a Bill of Rights presented to William and Mary at their accession [in 1689]. But no doubt can arise in the American governments, the fundamental maxim of which is, that sovereignty is vested in the people, a position so plain and simple that the meanest capacity can comprehend it, and so well established both in theory and practice, that no man will deny it. Consequently should Congress attempt to exercise any powers which are not expressly delegated to them, their acts would be considered as void, and disregarded. In America it is the governors not the governed that must produce their Bills of Right: unless they can shew the charters under which they act, the people will not yield obedience. . . .

. . . But you are told the proposed plan may be amended. It is more perfect than any one man, or the convention of any one state could make it; because in those cases that general knowledge which is necessary to form such a system could not be obtained; and the jarring interests of 13 States, seperately considered could never be brought to unite. This to me was obvious from the beginning, and must now be so to every man. The conventions of six States have agreed to the plan without amendments.—Will these states recede? The amendments proposed in different states are irreconciliable. I will only mention those of the Pennsylvania minority, and of Governor Randolph. The Pennsylvanians object principally to the power of Congress over the purse and sword.—Governor Randolph considers that power as essentially

necessary. The Pennsylvanians propose to amend the present confederation by giving great powers to Congress.[2]—Governor Randolph says, "that the present confederation must be thrown aside."[3] Would these men ever agree? Then be not deceived to your ruin. Friends and Countrymen, let my earnest solicitude for your peace and liberty be my apology for thus intruding my sentiments. Few men in my native county receive any other vehicle of intelligence than that printed among them; in it appeared the several objections to federal measures, on which I have animadverted. I only regret that so great a cause has not in this place been defended by an abler pen than that of ALEXANDER WHITE.

1. The first part of this essay was printed on 22 February (BoR, II, 331–35). For the entire conclusion, see RCS:Va., 438–45.

2. For the amendments proposed by the minority in the Pennsylvania Convention, see (BoR, I, 241–43).

3. For Edmund Randolph's reasons for not signing the constitution, see BoR, II, 211–16.

A Farmer II

Baltimore Maryland Gazette, 29 February 1788 (excerpts)[1]

A bill of rights is an useless, if not a dangerous thing; and a standing army, a bugbear, an hobgoblin to frighten children.[2]—This seems to me the doctrine of *Aristides*, and the common language abroad . . .

⟨In *England*, by their bill of rights, a standing army is declared to be contrary to their constitution, and a militia the only natural and safe defence of a free people.—This keeps the jealousy of the nation constantly awake, and has proved the foundation of all the other checks.

In the American constitution, there is no such declaration, or check at all.

In *England*, the military are declared by their constitution to be in *all* cases subordinate to the civil power; and consequently the civil officers have always been active in supporting this pre-eminence.

In the American constitution, there is no such declaration.

In *England*, the mutiny bill can only be passed from year to year, or on its expiration every soldier is as free, and the equal by law of the first general officer of the land.[3]

In *America*, the articles of war (which is the same thing) has been already considered as *perpetual* (as I am well informed) under even the present Congress,[4] although the constitutions of all the States positively forbid any standing troops at all, much less laws for them.

In *England*, the appropriation of money for the support of their army must be from year to year; in America it may be for double the period.

How favorable is this contrast to Britain—that Britain which we lavished our blood and treasure to separate ourselves from, as a country of slavery—But we then held different sentiments from those now become so fashionable; for this I appeal to the constitutions of the several States.

In the declaration of rights of *Massachusetts*, sect. 17.—The people have a right to keep and to bear arms for the common defence. And as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature, and the military power shall always be held in exact subordination to the civil authority, and be governed by it.

Sect. 27. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.[5]

Declaration of rights of *Pennsylvania*, sect. 13.—That the people have a right to bear arms for the defence of themselves and the State; and as standing armies in the time of peace, are dangerous to liberty, they ought not to be kept up: And that the military should be kept under strict subordination to, and governed by the civil power.[6]

Declaration of rights of *Maryland*, sect. 25.—That a well regulated militia is the proper and natural defence of a free government.

Sect. 26. That standing armies are dangerous to liberty, and ought not to be raised or kept without consent of the legislature.

Sect. 27. That in all cases and at all times the military ought to be under strict subordination to, and controul of the civil power.

Sect. 28. That no soldier ought to be quartered in any house in time of peace, without the consent of the owner; and in time of war, in such manner only as the legislature shall direct.[7]

Declaration of rights of *Delaware*, in the same words as *Maryland*.[8]

Declaration of rights of *North-Carolina*, sect. 17.—That the people have a right to bear arms for the defence of the State; and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by the civil power.[9]

Constitution of *South-Carolina*, sect. 42.—That the military be subordinate to the civil power of the State.[10]

But we are told by *Aristides*, that our poverty is our best security against many standing troops.—Are *we then, and our posterity*, always to be poor? This security would certainly cease with our poverty; but the truth is, our poverty instead of preventing will be the first cause of the increase of a standing army.—Our poverty will render the people less

able to pay the few troops it is admitted we must keep.—This expence added to the immense public and private debts, which an efficient government seems to be requisite to enforce payment of, together with the onerous and complicated civil governments, both Continental and State, will be productive of future uneasiness and discontent.—The most sanguine among us must expect some turbulence and commotion; let the smallest appearance of commotion peep out again in any part of the Continent, and there is not a rich man in the United States, who will think himself or his property safe, until *both* are surrounded with standing troops. This is the only public purpose for which *these* men ever did, or ever will willingly contribute their money. But then, according to their laudable custom, they must have interest for their advances;—this increases the public burthens—Commotion is followed by commotion, until the spirit of the people is broken and sunk by the halter, the scaffold, and a regular standing army.⟩[11]—

Yet notwithstanding this I am as sensible as *Aristides*, that a few troops will be necessary for the United States, for those very services which he says it would be oppressive to a free people constantly to execute.—The western territory, some guards, arsenals and posts whenever our finances will admit our attention to that safe and honorable defence, a navy—will require a few men in constant pay. But it is this necessity that alone causes all my apprehension. There is no public *abuse* that does not spring from the necessary *use* of power,—it is that insensible progress from the *use* to the *abuse*, that has led mankind through scenes of calamity and woe, that make us now shrink back with horror, from the history of our species. Do we not see at this moment, that even the present Congress have been compelled by *necessity* to embody and maintain troops *in time of peace* for these purposes; and yet the raising or maintaining one man is as complete a violation of the bill of rights of the several States, as the raising 100,000.—This necessary infraction of the only check that existed, has already taught all America to view the approach of a standing army, with composure and indifference, nay when a limitation of the evil is proposed, *Aristides* asks without hesitation—how shall we distinguish between *peace* and a *threatened war*? Shall we not be surprized, unprepared?

I must confess that from the vigor and resolution with which we began the erection of these our fabrics of freedom, I was persuaded that the grave would have closed on my bones, before this question would be publicly proposed in America.—Are we then to look up to a standing army for the defence of this soil from foreign invasion? Have we forgot that a few freemen of Sparta defended their country against a million of Persian slaves? Have not an handful of free Swiss farmers,

defended their country against the numerous veteran armies, which Burgandy, Austria and Bourbon have led against them? They beat them among their rocks, and then descended into the plains and beat them, and they will beat them forever on any ground, to all eternity, whilst they remain free and are defending that freedom.—Did it not cost the Spaniards more time and blood to subdue a few republican unarmed Indians, on the little island of Gran Canaria, than they expended in the destruction of the mighty empires of Mexico and Peru, defended by numerous standing armies? Did their arms meet with any resistance on this Continent, until they penetrated to the free republics of Chili?—I had rather trust the defence of a country to the savage valour of a few Shawnesse and Delawares, who live in freedom and value the blessing, than to the numerous hosts of civilized slaves that surround the thrones of Delhi, Pekin and Ispahan—But a few years have elapsed since that feather of a King, Lewis XIVth, overrun all Holland in a few days, and became master, almost without resistance, of that country which the veteran infantry of Spain, led by the most celebrated Captains, an age of chivalry produced, Alva, Alexander Farneza, and the Marquis Spinola, were forced to gain inch by inch, from a few desperate Burghers. When the French troops came, the people were universally discontented with the oppressions of the rich, as soon as they had reeked a brutal vengeance on the aristocracy, the latent courage of the nation revived, and Lewis was obliged to scamper off as fast as he came.—Let the body of the people be interested in the defence of a *good* government, and my countrymen need not fear being surprized by all the slaves and brutes that the despots of the old and new world can arm against them.—There will then need no distinction of a threatened war, and our establishment may at all times be limited to the purposes just mentioned.—

But perhaps standing troops may be wanted to suppress *domestic* insurrections? The people cannot be trusted to [punish?] the people, is becoming a cant expression; but I fervently hope by no means a general sentiment. I am free to declare, that I never wish to see any measure of government enforced by arms, which the yeomanry of the United States will not turn out to support.

⟨My countrymen! never forget this truth, which the sad experience of your fellow-mortals has witnessed with their blood!—Remember it yourselves!—Engrave it on the tender minds of your children, as the first article of their political creed—that, *There is no form of government safe with a standing army, and there is none that is not safe without.*—A people may frequently be so unfortunate as to loose their liberties. They may be so foolish as to give them away, as in Denmark, where not

only the senators and representatives of the people, but also every man in the whole empire of the smallest note, or consequence, signed a formal surrender of their liberties on an instrument now kept in the archives of that kingdom[12]—an everlasting monument of—*how catching a thing this signing of names is;* or of what is now called—*a modest deference for the opinion of others.* But whether they loose them, or give them away, they will soon regain them, or resume them, unless they are prevented by a *standing army*⟩[13]—And also recollect, my fellow-citizens, *That what is doctrine to day, may be treason to-morrow. . . .*

1. On 26 February the *Maryland Journal* commented that "A Farmer" was received and that it would appear in the next issue, on 29 February. For the complete essay, see RCS:Md., 325–40n. For a headnote on the entire "A Farmer" series, see BoR, II, 314–16.

2. See "Aristides" Remarks, 31 January 1788 (RCS:Md., 239; BoR, II, 299–300).

3. See "Aratus," post-2 November 1787, note 8 (RCS:Md., 44).

4. The Articles of War, consisting of sixty-nine articles, were adopted by the Second Continental Congress on 30 June 1775, and on 7 November Congress made some alterations and additions to them. They were ordered printed on 13 November (JCC, II, 111–23; III, 331–34, 352). On 3 June 1784 the Confederation Congress created a force of 700 non-commissioned officers and privates "for taking possession of the western posts" and resolved "That the said troops when embodied, on their march, on duty, and in garrison, shall be liable to all the rules and regulations formed for the government of the late army of the United States, or such rules and regulations as Congress or a committee of the states may form" (JCC, XXVII, 538–40).

5. See BoR, I, 79, 80.

6. *Ibid.*, 96.

7. *Ibid.*, 71–72.

8. See sections 18–21 of Delaware's Declaration of Rights (*ibid.*, 66).

9. *Ibid.*, 92.

10. See RCS:S.C., 503.

11. The text in angle brackets was reprinted in Eleazer Oswald's pamphlet edition of Luther Martin's *Genuine Information.* See the headnote to "A Farmer" I, Baltimore *Maryland Gazette*, 15 February (BoR, II, 314–15).

12. For the background to the 1661 signing of the "Instrument or Pragmatic Sanction Regarding the King's Hereditary Rights to the Kingdoms of Norway and Denmark" that gave the hereditary monarch absolute power, see RCS:Va., 1509n–10n.

13. See note 11 (above). At this point in the pamphlet edition there appears the following text:

> (a) The conduct of some people in Philadelphia, immediately after the general convention broke up, was equally foolish and absurd. They blindly followed the dictates and tenets of a few ambitious demagogues, who proposed petitions to the legislature, praying the adoption of the proposed government,[14] and like the miserable Danes, would have readily *signed away* not only their own, but even the liberties of their children.

14. In September 1787 these petitions were signed by more than 4,000 people in the city of Philadelphia and in the counties of Philadelphia and Montgomery (RCS:Pa., 62, 64, 64–65, 65, 67, 104, 130, 134, 137–38n).

A Columbian Patriot: Observations on the Constitution Boston, February 1788 (excerpt)

The author of the pamphlet signed "A Columbian Patriot" was Mercy Otis Warren of Milton, Mass. In mid-May 1788, Warren wrote an English friend that "If you wish to know more of the present ideas of your friend and the consequences apprehended from the hasty adoption of the new form of government, I will whisper you—You may find them at large in the subjoined manuscripts I now enclose with a printed pamphlet entitled the Columbian Patriot by the same hand" (to Catherine Macaulay Graham, c. 16 May, Mercy Warren Papers, MHi. Graham replied that the pamphlet was "written with spirit and energy," 29 October, *ibid.*). Contemporaries, however, suspected others of being "A Columbian Patriot." In early March, Rufus King, a Massachusetts Convention delegate who had just returned to his family in New York City, asserted that Elbridge Gerry was "A Columbian Patriot" and that he "sinks daily in public esteem, and his bantling goes unnoticed" (to John Alsop, 2 March, RCS:Mass. Supplement, 334). Almost two months later Samuel A. Otis, a Massachusetts delegate to Congress in New York City, wrote Mercy's husband James Warren, that he had "heard in the Circles here, you, or Sister W have written the Columbian patriot, I suspect you, but wish to have it ascertained" ([24?] April, Mercy Warren Papers, MHi). Historians and bibliographers accepted Gerry as "A Columbian Patriot" until 1930 when Charles Warren, a descendant of James and Mercy Warren, discovered family papers which indicated that Mercy Warren was "A Columbian Patriot." See Charles Warren, "Elbridge Gerry, James Warren, Mercy Warren and the Ratification of the Federal Constitution in Massachusetts," Massachusetts Historical Society *Proceedings*, LXIV (1930–32), 142–64.

In late February, "A Columbian Patriot" was printed in Boston as a nineteen-page pamphlet entitled *Observations on the New Constitution, and on the Federal and State Conventions.* The title page included the epigraph—"*Sic transit gloria Americana.*" The printer was probably Edward E. Powars, but none of the extant copies of the pamphlet has a title page and no advertisements have been found. (Powars of the Boston *American Herald* had recently printed two other Antifederalist pamphlets, *Letters from the Federal Farmer* and *The Dissent of the Minority of the Pennsylvania Convention*, CC:242, 353. On 19 March the *Massachusetts Centinel* noted with some sarcasm that the pamphlet had "ascended from a certain press."). Mercy Warren stated that the pamphlet "circulated in the Massachusetts immediately on their ratification" of the Constitution which took place on 6 February (to Catherine Macaulay Graham, c. 16 May, Mercy Warren Papers, MHi). The entire pamphlet was reprinted in two Philadelphia Antifederalist newspapers—the *Freeman's Journal*, 12, 19, and 26 March, and the *Independent Gazetteer*, 13, 20, and 27 March. The *Journal* prefaced its reprinting with a statement by "A.B.": "The inclosed Pamphlet was written in Massachusetts since the ratification of the proposed Constitution by that State. The author's mode of reasoning is good, in my opinion. Give it to us 'wholesale or retail' as best suits you, and oblige yours, &c."

In late March or early April Thomas Greenleaf of the *New York Journal* reprinted "A Columbian Patriot" as a twenty-two page pamphlet with this colo-

phon: "Boston printed, New York re-printed, M, DCC, LXXX, VIII." The Boston and New York versions of the pamphlet are identical except for slight differences in punctuation, paragraphing, capitalization, italics, and spelling. Using the same plates, Greenleaf reprinted the pamphlet, "*by request*," in the *New York Journal* on 2, 4, and 5 April.

On 6 April—about three weeks before the election of delegates to the New York Convention—the New York City Federal Republican Committee forwarded 1,700 copies of Greenleaf's edition of "A Columbian Patriot" to Antifederal county committees throughout the state, requesting that the pamphlets be distributed. The New York City committee also wanted the county committees to pay for the cost of printing (RCS:N.Y., 894–98). The Albany Antifederal Committee replied that it had received the pamphlets and promised to distribute them, but it refused to pay the costs of printing. It had other "considerable" expenses. The committee described the pamphlet as "a well composed piece but in a Stile too sublime & florid for us common people in this Part of the Country" (12 April, RCS:N.Y., 898–99).

On 11 June the printers of the North Carolina *Wilmington Centinel* noted that they had just received copies of "A Columbian Patriot" from New York and that they would sell the pamphlet for two shillings each. The advertisement was run in the issues of 18, 25 June, and 2 July. On 12 March 1789 Thomas Greenleaf advertised the pamphlet for sale, with a number of other Antifederalist pamphlets, in his *New York Journal*.

Federalist attacks on the pamphlet were few but sharp. Rufus King called it "a pitiful performance" (to John Alsop, 2 March, Ford, *Pamphlets*, 2). On 19 March the *Massachusetts Centinel* (RCS:Mass., 1725–26) noted that "Every real friend to his country, must feel his indignation greatly excited at a recent attempt of the antifederal JUNTO to poison the publick mind, by the circulation of a malicious pamphlet, which, like the locusts from the bottomless pit, hath ascended from a certain press, and are scattered over the country—This effort of a detestable faction, to traduce the late Federal and State Conventions, is however a mere piece of bombast and declamation, like the *cant, whinings*, and *ravings* of the CENTINEL and PHILADELPHIENSIS of Pennsylvania—we trust our good friends will be on their guard against the attempts of these *desperadoes*; but, should they unfortunately effect their purposes in any degree, the prime agents may assure themselves of being the earliest victims to the resentment of an enraged people."

For the entire pamphlet, see CC:581.

. . . There is no provision by a bill of rights to guard against the dangerous encroachments of power in too many instances to be named: but I cannot pass over in silence the insecurity in which we are left with regard to warrants unsupported by evidence—the daring experiment of granting *writs of assistance* in a former arbitrary administration is not yet forgotten in the Massachusetts;[1] nor can we be so ungrateful to the memory of the patriots who counteracted their operation, as so soon after their manly exertions to save us from such a detestable instrument of arbitrary power, to subject ourselves to the insolence of any petty

revenue officer to enter our houses, search, insult, and seize at pleasure. We are told by a gentleman of too much virtue and real probity to suspect he has a design to deceive—"that the whole constitution is a declaration of rights"—but mankind must think for themselves, and to many very judicious and discerning characters, the whole constitution with very few exceptions appears a perversion of the rights of particular states, and of private citizens.—But the gentleman goes on to tell us, "that the primary object is the general government, and that the rights of individuals are only incidentally mentioned, and that there was a clear impropriety in being very particular about them."[2] But, asking pardon for dissenting from such respectable authority, who has been led into several mistakes, more from his prediliction in favour of certain modes of government, than from a want of understanding or veracity. The rights of individuals ought to be the primary object of all government, and cannot be too securely guarded by the most explicit declarations in their favor. This has been the opinion of the Hampdens, the Pyms, and many other illustrious names, that have stood forth in defence of English liberties; and even the Italian master in politicks, the subtle and renouned Machiavel acknowledges, that no republic ever yet stood on a stable foundation without satisfying the common people.[3] . . .

1. In February 1761, following the death of George II, the surveyor general of customs in Massachusetts requested that the superior court issue new writs of assistance that would permit customs officers to search for smuggled goods. (The court had been issuing such writs since 1755.) Boston merchants protested and hired James Otis as one of their lawyers to question the legality of the writs. Otis argued that the writs were void because they violated the fundamental principles of law. In December 1761 the Superior Court of Massachusetts, of which Thomas Hutchinson was chief justice, ordered that the writs be issued. In 1766 a Boston mob helped a merchant resist the sheriff who had a writ of assistance.

2. On 23 January the Massachusetts Convention debated the extent of Congress' powers outlined in Article I, section 8. See speeches by Antifederalist General Samuel Thompson of Topsham, Maine, and a response by former Governor James Bowdoin (RCS:BoR, II, 281–82).

3. See "A Discourse on Remodeling the Government of Florence," in Allan Gilbert, trans., *Machiavelli: The Chief Works and Others* (3 vols., Durham, N.C., 1965), I, 110. This "Discourse" was written about 1520.

Giles Hickory
New York American Magazine, 1 March 1788[1]

GOVERNMENT

The constitution of Virginia, like that of Connecticut, stands on the true principles of a Republican Representative Government. It is not shackled with a Bill of Rights, and every part of it, is at any time, alterable by an ordinary legislature.[2] When I say *every part* of the constitution

is alterable, I would except the right of elections, for the representatives have not power to prolong the period of their own delegation. This is not numbered among the rights of legislation, and deserves a separate consideration. This right is not vested in the legislature—it is in the people at large—it cannot be alienated without changing the form of government. Nay the right of election is not only the *basis*, but the *whole frame* or essence of a republican constitution—it is not merely *one*, but it is the *only* legislative or constitutional act, which the people at large can with propriety exercise.

The simple principle for which I contend is this—"That in a representative democracy, the delegates chosen for legislators ought, at all times, to be competent to every possible act of legislation *under that form of government*; but not to *change that form.*["] Besides it is contrary to all our ideas of *deputation* or *agency for others*, that the person acting should have the power of extending the period of agency beyond the time specified in his commission. The representative of a people is, as to his powers, in the situation of an Attorney, whose letters commission him to do every thing which his constituent could do, where he on the spot; but for a limited time only. At the expiration of that time his powers cease; and a representative has no more right to extend that period, than a plenipotentiary has to renew his commission. The British Parliament, by prolonging the period of their existence from one to three, and from three to seven years, committed an unjust act—an act however which has been confirmed by the acquiescence of the nation, and thus received the highest constitutional sanction. I am sensible that the Americans are much concerned for the liberties of the British nation; and the act for making Parliaments septennial is often mentioned as an arbitrary oppressive act, destructive of English liberty.[a] The English are doubtless obliged to us for our tender concern for their happiness—yet for myself I entertain no such ideas—The English have generally understood and advocated their rights as well as any nation, and I am confident that the nation enjoys as much happiness and freedom, and much more tranquility, under septennial Parliaments, than they would with annual elections. Corruption to obtain offices will ever attend wealth; it is generated with it—grows up with it—and will, always fill a country with violent factions and illegal practices. Such are the habits of the people, that money will have a principal influence in carrying elections; and such vast sums are necessary for the purpose, that if elections were annual, none but a few of the wealthiest men could defray the expense—the land-holders of moderate estates would not offer themselves as candidates—and thus in fact annual elections, with the present habits of the people, would actually diminish the in-

fluence of the commons, by throwing the advantage into the hands of a corrupt ministry; and a few overgrown nabobs. Before annual elections would be a blessing to the English, their habits must be changed—but this cannot be effected by human force. I wish my countrymen would believe that other nations understand and can guard their privileges, without any lamentable outcries from this side of the Atlantic. Government will always take its complexion from the habits of the people—habits are continually changing from age to age—a body of legislators taken from the people, will generally represent these habits at the time when they are chosen—hence these two important conclusions, 1st That a legislative body should be frequently renewed, and always taken from the people—2d That a government which is perpetual, or incapable of being accommodated to every change of national habits, must in time become a *bad* government.

With this view of the subject, I cannot suppress my surprise at the reasoning of Mr. Jefferson on this very point.[(b)] He considers it as a defect in the constitution of Virginia, that *it can be altered by an ordinary legislature*. He observes that the Convention which framed the present Constitution of that State, "received no powers in their creation which were not given to every legislature before and since. So far and no farther authorised, they organized the government by the ordinance entitled Constitution or form of government. It pretends to no higher authority than the other ordinances of the same session; it does not say, that it shall be perpetual; that it shall be unalterable by other legislatures; that it shall be trancendent above the powers of those, who they knew would have equal powers with themselves."

But suppose the framers of this ordinance had said, that it should be *perpetual* and *unalterable*; such a declaration would have been void. Nay altho the people themselves had individually and unanimously declared the ordinance perpetual, the declaration would have been invalid. One Assembly cannot pass an act, binding upon a subsequent Assembly of equal authority;[(c)] and the people in 1776 had no authority, and consequently could delegate none, to pass a single act which the people in 1777 could not repeal and annul. And Mr. Jefferson himself, in the very next sentence, assigns a reason, which is an unanswerable argument in favor of my position, and complete refutation of his own. These are his words. "Not only the silence of the instrument is a proof they thought it would be alterable, but their own practice, also: for this very convention, meeting as a House of Delegates in General Assembly with the new Senate in the autumn of that year, passed acts of Assembly in contradiction to their ordinance of government; and *every Assembly from that time to this has done the same*."

Did Mr. Jefferson reflect upon the inference that would be justly drawn from these facts? Did he not consider that he was furnishing his opponents with the most effectual weapons against himself? The acts passed by *every subsequent Assembly in contradiction to the first ordinance*, prove that all the Assemblies were *fallible* men; and consequently not competent to make *perpetual Constitutions* for future generations. To give Mr. Jefferson, and the other advocates for *unchangeable Constitutions*, the fullest latitude in their argument, I will suppose every freeman in Virginia could have been assembled to deliberate upon a form of government, and that the present form, or even one more perfect, had been the result of their Councils—and that they had declared it unalterable. What would have been the consequence? Experience would probably have discovered, what is the fact—and what forever will be the case—that *Conventions* are not possessed of *infinite wisdom*—that the wisest men cannot devise a perfect system of government. Suppose then that after all this solemn national transaction, and a formal declaration that their proceedings should be unalterable, a single article of the constitution should be found to interfere with some national benefit—some material advantage; where would be the power to change or reform that article? In the same general Assembly of all the people, and in no other body. But must a State be put to this inconvenience, to find a remedy for every defect of constitution?

Suppose, however, the *Convention* had been empowered to declare the form of government *unalterable*: What would have been the consequence? Mr. Jefferson himself has related the consequence. Every succeeding Assembly has found errors or defects in that frame of government, and has happily applied a remedy. But had not every Legislature had power to make these alterations, Virginia must have gone thro the farce and the trouble of calling an *extraordinary* Legislature, to do that which an *ordinary* Legislature could do just as well, in their annual session; or those errors must have remained in the constitution, to the injury of the State.

The whole argument for bills of rights and unalterable constitutions rests on two suppositions, viz. that the Convention which frames the government, is *infallible*; and that future Legislatures will be *less honest*—*less wise*—and *less attentive to the interest of the State*, than a present Convention: The first supposition is *always false*, and the last is *generally* so. A declaration of perpetuity, annexed to a form of government, implies a supposition of *perfect wisdom and probity* in the framers; which is both arrogant and impudent—and it implies a supposed power in them, to abridge the power of a succeeding Convention and of the future state or body of people. The last supposition is, in every possible instance of

legislation, *false*; and an attempt to exercise such a power, a high handed act of tyranny. But setting aside the argument, grounded on a want of power in one Assembly to abridge the power of another, what occasion have we to be so jealous of future Legislatures? Why should we be so anxious to guard the future rights of a nation? Why should we not distrust the people and the Representatives of the present age, as well as those of future ages, in whose acts we have not the smallest interest? For my part, I believe that the people and their Representatives, two or three centuries hence, will be as honest, as wise, as faithful to themselves, and will understand their rights as well, and be as able to defend them, as the people are at this period. The contrary supposition is absurd.

I know it is said that other nations have lost their liberties by the ambitious designs of their rulers, and we may do the same. The experience of other nations furnishes the ground of all the arguments used in favor of an unalterable constitution. The advocates seem determined that posterity shall not lose their liberty, even if they should be willing and desirous to surrender it. If a few declarations on parchment will secure a single blessing to posterity, which they would otherwise lose, I resign the argument and will receive a thousand declarations. Yet so thoroughly convinced am I of the opposite tendency and effect of such unalterable declarations, that, were it possible to render them valid, I should deem every article an infringment of civil and political liberty. I should consider every article as a restriction which might impose some duty which in time might cease to be useful and necessary, while the obligation of performing it might remain; or which in its operation might prove pernicious, by producing effects which were not expected, and could not be foreseen. There is no one single right, no privilege which is commonly deemed fundamental, which may not, by an unalterable establishment, preclude some amendment, some improvement in the future administration of government. And unless the advocates for unalterable constitutions of government, can prevent all changes in the wants, the inclinations, the habits and the circumstances of people, they will find it difficult, even with all their declarations of unalterable rights, to prevent changes in government. A paper-declaration is a very feeble barrier against the force of national habits, and inclinations.

The loss of liberty, as it is called, in the kingdoms of Europe, has, in several instances, been a mere change of government, effected by a change of habits, and in some instances this change has been favorable to liberty. The government of Denmark was changed from a mixed form, like that of England, to an absolute monarchy, by a solemn de-

liberate act of the people, or States.[3] Was this a loss of liberty? So far from it, that the change removed the oppressions of faction, restored liberty to the subject and tranquility to the kingdom. The change was a blessing to the people. It indeed lodged a power in the Prince to dispose of life and property; but at the same time it lodged in him a *power to defend both*—a power which before was lodged *no where*—and it is infinitely better that such a power should be vested in a *single hand*, than that it should *not exist at all*. The monarchy of France has grown out of a number of petty States and lordships; yet it is a fact, proved by history and experience, that the subjects of that kingdom have acquired liberty, peace and happiness in proportion to the diminution of the powers of the petty sovereignties, and the extension of the prerogatives of the Monarch. It is said that Spain lost her liberties under the reign of Charles Vth; but I question the truth of the assertion; it is probable that the subject has gained as much by an abridgement of the powers of the nobility, as he lost by an annihilation of the Cortez. The United Netherlands fought with more bravery and perseverance to preserve their rights, than any other people, since the days of Leonidas; and yet no sooner established a government, so jealously guarded as to defeat its own designs, and prevent the good effects of government, than they neglected its principles—the freemen resigned the privilege of election, and committed their liberties to a rich aristocracy.

There was no compulsion—no external force in producing this revolution; but the form of government, which had been established on paper, and solemnly ratified, was not suited to the genius of the subjects. The burghers had a right of electing their rulers; but they voluntarily neglected it; and a *bill of rights*, a *perpetual constitution* on parchment guaranteeing that right, was a useless form of words, because opposed to the temper of the people. The government assumed a complexion, more correspondent to their habits, and tho in theory no constitution is more cautiously guarded against an infringement of popular privileges, yet in practice it is a real aristocracy.

The progress of government in England has been the reverse—The people have been gaining freedom by intrenching upon the powers of the nobles and the royal prerogatives. These changes in government do not proceed from *bills of rights, unalterable forms* and *perpetual establishments*—liberty is never secured by such paper declarations; nor lost for want of them.—The truth is Government originates in necessity, and takes its form and structure from the genius and habits of the people; and if on paper a form is not accommodated to those habits, it will assume a new form, in spite of all the formal sanctions of the supreme authority of a State. Were the monarchy of France to be dis-

solved, and the wisest system of republican government ever invented, solemnly declared, by the King and his council, to be the constitution of the kingdom; the people, with their present habits, would refuse to receive it; and resign their privileges to their beloved sovereign. But so opposite are the habits of the Americans, that an attempt to erect a monarchy or an aristocracy over the United States, would expose the authors to the loss of their heads.[d] The truth is, the people of Europe, since they became civilized, have, in no kingdom, possessed the true principles of liberty. They could not therefore lose what they never possessed. There has been, from time immemorial, some rights of government—some prerogatives vested in some man or body of men, independent of the suffrages of the body of the subjects. This circumstance distinguishes the governments of Europe and of all the world, from those of America, There has been in the free nations of Europe an incessant struggle between freedom or national rights, and hereditary prerogatives. The contest has ended variously in different kingdoms; but generally in depressing the power of the nobility; ascertaining and limiting the prerogatives of the crown, and extending the privileges of the people. The Americans have seen the records of their struggles; and without considering that the objects of the contest *do not exist in this country*; they are laboring to guard rights which there is no party to attack. They are as jealous of their rights, as if there existed here a King's prerogatives or the powers of nobles, independent of their own will and choice, and ever eager to swallow up their liberties. But there is *no man* in America, who claims any rights but what are common to *every man*—there is no man who has an interest invading popular privileges, because his attempt to curtail another's rights, would expose his own to the same abridgement. The jealousy of people in this country has no proper object against which it can rationally arm them—it is therefore directed *against themselves*, or against an invasion which they *imagine* may happen in future ages. The contest for *perpetual bills of rights* against a future tyranny, resembles Don Quixotes fighting windmills; and I never can reflect on the declamation about an *unalterable constitution* to guard certain rights, without wishing to add another article, as necessary as those that are generally mentioned; viz, "that no future Convention or Legislature shall cut their own throats, or those of their constituents." While the habits of the Americans remain as they are, the people will choose their Legislature from their own body—that Legislature will have an interest inseperable from that of the people—and therefore an act to restrain their power in any article of legislation, is as unnecessary as an act to prevent them from committing suicide.

Mr. Jefferson, in answer to those who maintain that the form of government in Virginia is unalterable, because it is called a *constitution*, which, ex vi termini, means an act above the power of the ordinary Legislature, asserts that *constitution*, *statute*, *law* and *ordinance* are synonymous terms and convertible, as they are used by writers on government; Constitutio dicitur jus quod a principe conditur. Constitutum, quod ab imperatoribus rescriptum statutumve est. Statutum, idem quod lex.[e] Here the words *constitution*, *statute* and *law* are defined by each other—They were used as convertible terms by all former writers whether Roman or British; and before the terms of the civil law were introduced, our Saxon ancestors used the correspondent English words, *bid* and *set*.[f] From hence he concludes that no inference can be drawn from the meaning of the word, that a *constitution* has a higher authority than a law or statute. This conclusion of Mr. Jefferson is just.

He quotes Lord Coke also to prove that any Parliament can abridge, suspend or qualify the acts of a preceding Parliament. It is a maxim in their laws, that "Leges posteriores priores contrarias abrogant."[4] After having fully proved that *constitution*, *statute*, *law* and *ordinance* are words of similar import, and that the constitution of Virginia is at any time alterable by the ordinary Legislature, he proceeds to prove the danger to which the rights of the people are exposed for want of an *unalterable form of government*. The first proof of this danger he mentions, is, the power which the Assembly exercises of determining its own quorum. The British Parliament fixes its own quorum.—The former Assemblies of Virginia did the same. During the war the Legislature determined that *forty* members should be a quorum to proceed to business, altho not a fourth part of the whole house.[5] The danger of delay, it was judged, would warrant the measure. This precedent, our writer supposes, is subversive of the principles of the government, and dangerous to liberty.

It is a dictate of natural law that a *majority should govern*; and the principle is universally received and established in all societies, where no other mode has been arbitrarily fixed. This natural right cannot be alienated *in perpetuum*; for altho a Legislature, or even the body of the people may resign the powers of government to forty or to four men, when they please, yet they may likewise resume them at pleasure.

The people may, if they please, create a dictator on an emergency in war, but his creation would not *destroy*, but merely *suspend* the natural right of the *Lex majoris partis*. Thus forty members, a Minority of the Legislature of Virginia, were empowered during a dangerous invasion, to legislate for the State; but any subsequent Assembly might have di-

vested them of that power. During the operation of the law, vesting them with this power, their acts were binding upon the State; because their power was derived from the general sense of the State—it was actually derived from a legal majority. But that majority could, at any moment, resume the power and practice on their natural right.

It is a standing law of Connecticut that forty men should be a quorum of the House of Representatives, which consists of about 170 members. The date of this law, I cannot find; but presume it must have existed for half a century; and I am confident that it never excited a murmur, or a suspicion that the liberties of the people were in danger, Yet this law creates an oligarchy; it is an infringement of natural right; it subjects the State to the possibility, and even the probability of being governed at times by a minority. The acquiescence of the State, in the existence of the law, gives validity, and even the sanction of a majority, to the acts of that minority; but the majority may at any time resume their natural right, and make the assent of more than half of the members, necessary to give validity to their determinations.

The danger therefore arising from a power in the Assembly to determine their own quorum, is merely ideal; for no law can be perpetual—the authority of a majority of the people or of their Representatives, is always competent to repeal any act that it found unjust or inconvenient. The acquiescence however of the people of the States mentioned, and that in one of them for a long course of years, under an oligarchy; or their submission to the power of a minority, is an incontestible proof of what I have before observed, that *theories* and *forms of government* are *empty things*—that the spirit of a government springs immediately from the temper of the people—and the exercise of it will generally take its tone from their feelings. It proves likewise that a *union of interests* between the rulers and the people, which union will always co-exist with free elections, is not only the *best*, but the *only* security for their liberties which they can wish for and demand. The government of Connecticut is a solid proof of these truths. The Assembly of that State have always had power to abolish trial by jury, to restrain the liberty of the press, to suspend the habeas corpus act, to maintain a standing army, in short to command every engine of despotism; yet by some means or other it happens that the rights of the people are not invaded, and the subjects have generally been better satisfied with the laws, than the people of any other State. The reason is, the Legislature is a part of the people, and has the *same interest*. If a law should prove bad, the Legislature can repeal it; but in the *unalterable* bills of rights in some of the States, if an article would prove wrong and oppressive,

an ordinary Legislature cannot repeal or amend it; and the State will hardly think of calling a special convention for so trifling a purpose. In a future paper,[6] I shall take notice of some articles, in several of the State constitutions, which are glaring infractions of the first rights of freemen; yet they affect not a majority of the community, and centuries may elapse before the evil can be redressed, and a respectable class of men restored to the enjoyment of their rights.

To prove the want of an *unalterable constitution* in Virginia, Mr. Jefferson informs us that in 1776, during the distressed circumstances of the State, a proposition was made in the House of Delegates to create a Dictator, invested with every power, legislative, executive and judicial civil and military. In June, 1781, under a great calamity, the proposition was repeated, and was near being passed. By the warmth he discovers in reprobating this proposal, one must suppose that the creation of a Dictator even for a few months, would have buried every remain of freedom. Yet he seems to allow that the step would have been justified, had there existed an *irresistable necessity*.[7]

Altho it is possible that a case may happen in which the creation of a Dictator might be the only resort to save life, liberty, property, and the State, as it happened in Rome more than once; yet I should dread his power as much as any man, were I not convinced that the same men that appointed him, could, in a moment; strip him of his tremendous authority. A Dictator, with an army superior to the strength of the State, would be a despot; but Mr. Jefferson's fears seem grounded on the authority derived from the Legislature. A concession of power from the Legislature, or the people, is a voluntary suspension of a natural *unalienable* right; and is resumeable at the expiration of the period specified, or the moment it is abused. A State can never alienate a *natural right*—for it cannot legislate for those who are not in existence. It may consent to suspend that right for great and temporary purposes; but were every freeman in Virginia to assent to the creation of a *perpetual Dictator*, the act in itself would be void. The expedient of creating a Dictator is dangerous, and no free people would willingly resort to it—but there may be times when this expedient is necessary to save a State from ruin, and when every man in a State would cheerfully give his suffrage for adopting it. At the same time, a temporary investiture of unlimited powers in one man, may be abused—it may be an influential precedent—and the continuance of it may furnish the dictator with the means of perpetuating his office. The distress of a people must be extreme, before a serious thought of a Dictator can be justifiable. But the people who create, can annihilate a Dictator; their right to

govern themselves cannot be resigned by any act whatever, altho extreme cases may vindicate them in suspending the exercise of it. Even prescription cannot exist against this right; and every nation in Europe has a natural right to depose its King and take the government into its own hands.

(a) *The septennial act was judged the only guard against a popish reign, and therefore highly popular.*[8]
(b) *Notes on Virginia, page* 197. *Lond. Edit. Query* 13.[9]
(c) *Contracts, where a Legislature is a party, are excepted.*[10]
(d) *Some jealous people ignorantly call the proposed Constitution of Federal Government* an aristocracy. *If such men are honest their ignorance deserves pity—There is not a feature in the Constitution—The whole frame of Government is a pure Representative Republic.*
(e) *Calvini Lexicon Juridicum.*[11]
(f) *See Laws of the Saxon Kings.*[12]

1. Printed in the February issue of the magazine. Noah Webster was the author of this essay. For an earlier essay by Giles Hickory, see BoR, II, 226–30.

2. Both the Virginia Declaration of Rights (BoR, I, 111–13) and the Constitution of 1776 were "ordinances" adopted by the fifth revolutionary convention. Connecticut still functioned under its colonial charter, but the legislature adopated an act in 1786 that functioned as the state's bill of rights (BoR, I, 63–64).

3. See note 12 to "A Farmer" II, Baltimore *Maryland Gazette*, 29 February (BoR, II, 342).

4. Thomas Jefferson, *Notes on the State of Virginia* (Philadelphia, 1788) (Evans 21176), 131. The Latin translates "later laws abrogate earlier, contrary ones." See also Blackstone, *Commentaries*, Book I, Introduction, section 3, 89–91.

5. On 4 June 1781, as the British under Lord Cornwallis invaded Virginia, the House of Delegates met in Charlottesville and decided that the presence of 40 of 146 delegates was sufficient to constitute a quorum.

6. See RCS:N.Y., Supplement, 198–203, for the 1 April essay titled "GOVERNMENT."

7. Jefferson, *Notes on the State of Virginia*, 134.

8. Passed in the wake of the Jacobite uprising of 1715. The Septennial Act of 1716 remained in force until 1911.

9. Jefferson, *Notes on the State of Virginia*, 129.

10. The material in the paragraph containing internal footnote (c) comes from *ibid.*, 129.

11. *Ibid.*, 130.

12. *Ibid.*, 130.

Pittsburgh Gazette, 1 March 1788 (excerpt)[1]

CURSORY REMARKS on the FEDERAL CONSTITUTION.

. . . But what avails it to dwell on these things. The want of a *bill of rights* is the great evil. There was no occasion for a bill of *wrongs*; for

there will be *wrongs* enough. But oh! a *bill of rights*. What is the nature of a *bill of rights? It is a schedule or inventory of those powers which the Congress do not possess*. But if it is clearly ascertained what powers they have, what need of a catalogue of those powers which they have not? Ah! there is the mistake. A minister preaching, undertook, first, to show what was in his text; second, what was not in it. When it is specified what powers are given, why not also what powers are not given? A bill of rights is wanting and all those things which are usually secured under it.

1. The *rights of conscience* are swept away. The Confession of Faith; the Shorter Catechism, and the Pilgrims Progress are to go. The Psalms of Wats I am told, is the only thing of this kind that is to have any quarter at all.

2. The *liberty of the press*; that is gone at the first stroke. Not so much as an advertisement for a stray horse, or run away negro, can be put in any of the Gazettes.

3. The *trial by jury*, that is knocked in the head, and all that worthy class of men, the lawyers, who live by haranguing and bending the juries, are demolished.

I would submit it to any candid man, if in this constitution there is the least provision for the privilege of shaving the beard? or is there any mode laid down to take the measure of a pair of breeches? Whence then is it that men of learning seem so much to approve, while the ignorant are against it? the cause is perfectly apparent, viz. that reason is an erring guide, while instinct, which is the governing principle of the untaught is certain. Put a pig in a poke, carry it half a day's journey through woods and by ways; let it out and it will run home without deviation. Could old Franklin do this? What reason have we then to suppose that his judgment, or that of general Washington, could be equal to that of Smiley in state affairs.[2]

Were it not on this principle that we are able to account for it, it might be thought strange that old Livingston, of the Jersies,[3] could be so hood-winked as to give his sanction to such a diabolical scheme of tyranny amongst men. A constitution which may well be called hell-born. For if all the devils in Pandemonium had been employed about it, they could not have made a worse. . . .

1. Reprinted: Philadelphia *Federal Gazette*, 22 March; Philadelphia *American Museum*, April issue; Rhode Island *Providence Gazette*, 19 April; New York *Daily Advertiser*, 5 May. For the entire essay, see RCS:Pa. Supplement, 962–64. This essay is continued in the *Pittsburgh Gazette*, 15 March. The *Museum* cites this as written by Hugh Henry Brackenridge.

2. John Smilie of Fayette County, was one of the three primary Antifederalist speakers in the Pennsylvania Convention.

3. William Livingston, the governor of New Jersey from 1776 until his death in 1790, signed the Constitution at the federal Convention.

Petition of the Inhabitants of Wayne Township Cumberland County, Pa., 1 March 1788[1]

To the Honourable the Representatives of the freemen of the Commonwealth of Pennsylvania in General Assembly met,

The Petition of the Subscribers freemen Inhabitants of the County of Cumberland most respectfully sheweth.

That your Petitioners are desirous that order & good Goverment should prevail & that the Laws & civil Goverment should not be violated or subverted

That as the members of your Honourable Body are all sworn or affirm'd to do no act or thing that may be prejudicial or injurious to the Constitution of this State as established by the Convention they look up to you as the Guardians of their Rights & Liberties therein secured to your Petitioners

That as the Constitution expressly declares that the Poeple have a right to change alter or abolish their form of goverment when they think it will be conducive to their Interest or happiness, Your Petitioners believe there is ample Provision made for any change that may be ocasioned by adopting the proposed Foederal Constitution

That as the Constitution of Pennsylvania was not formed with a direct vew of a Foederal Goverment, the Right of the Poeple thereto could not be declared in more express terms

That the Necessity of an efficient Foederal Goverment is so great as to require no proof or illustration

That the proposd Foederal Constitution cannot be verry dangerous while the Legislature[s] of the different States possess the power of calling a convention, appointing the delegates & instructing them in the articles they wish altered or abolished

That your Petitioners believe it is more the duty of their Representatives to cooperate with the Legislatures of the different States in amending the parts that may yet appear to be defective, than to endeavour to deprive them of the benefit of what is indisputably usefull & necessary

That the objections to the Foederal Constitution are founded on the absurd supposition that the Representatives in Congress must have an interest different from & contrary to that of their Constituents

That as the proposd plan of Goverment hath been approvd by Congress & adopted by a convention appointed by the Citizens of this state for the express purpose of approving or condemning the same, the opposition of the Legislature would in our humble opinion be a deviation from the line of their conduct, a wanton usurpation of undelegated power and a flagrant violation of the Liberty of their Constituents

That Petitions requesting the intervention of the Legislature can only proceed from a desire of authorising the disorder & confusion now spreading through the state by the example of your august body. And

That their promoters ought to be inquired after & published, that they might be treated with that Indignation & contempt justly due to the traitors of their Country.

Wm. Bratton
Wm. Bratton Jur
James Bratton.
Samuel Bratton
George Gilson
Alexander Mckeighen
Wim. Scott
Joseph Graham
John Rankin
Jno Allen
Saml Holliday
Isaac Condich
Jona. Holliday
[Jona. Halgan?]
William Humphreys
John Bealy
Hugh Robison
John Little
William Junken
James Galloway
Jas Armstrong

James Bratton
David Walker
Joseph Galloway
James Armstrong
Peter Landon

John Bratton
John Cuningham
James Robison
William Lauther
James Caruthers

ENDORSED: Petition of a Number of Inhabitants of Wayne Township in Cumberland County Praying that the Assembly may not Directly or Indirectly Oppose the Adoption of the Feoderal Constitution & for other Purposes therein Mentioned—

Read 1 time Mar. 1. 1788.

1. MS, John A. McAllister Papers, PPL.

Aristides

Maryland Journal, 4 March 1788 (extra) (excerpt)[1]

To the CITIZENS of MARYLAND.

Although I consider myself under no necessity to take notice of every anonymous writer, who shall think proper to honour me with his abuse; there are some things in a recent publication, upon which a comment may naturally be expected. That characteristic indolence, which is imputed to you by the Farmer, may prevent many from detecting his numerous misrepresentations.

The best comment on a great part of his production will be the following quotation.

⟨"The proposed constitution contains no bill of rights.

"Consider again the nature and intent of a federal republic. It consists of an assemblage of distinct states, each completely organized for the protection of its own citizens, and the whole consolidated, by express compact, under one head, for their general welfare and common defence.

"Should the compact authorize the sovereign, or head, to do all things it may think necessary and proper, then is there no limitation to its authority; and the liberty of each citizen in the union has no other security, than the sound policy, good faith, virtue, and perhaps proper interests, of the head.

"When the compact confers the aforesaid general power, making nevertheless some special reservations and exceptions, then is the citizen protected further, so far as these reservations and exceptions shall extend.

"But, when the compact ascertains and defines the power delegated to the federal head, then cannot this government, without manifest usurpation, exert any power not expressly, or by *necessary* implication, conferred by the compact.

"This doctrine is so obvious and plain, that I am amazed any good man should deplore the omission of a bill of rights. When we were told, that the celebrated Mr. Wilson had advanced this doctrine in effect, it was said, Mr. Wilson would not dare to speak thus to a CONSTITUTIONALIST. With talents inferior to that gentleman's, I will maintain the doctrine against any CONSTITUTIONALIST who will condescend to enter the lists, and behave like a gentleman.—

"It is, however, the idea of another most respectable character, that, as a bill of rights could do no harm, and might quiet the minds of many good people, the convention would have done well to indulge them.—With all due deference, I apprehend, that a bill of rights might

not be this innocent quieting instrument. Had the convention entered on the work, they must have comprehended within it every thing, which the citizens of the United States claim as a natural or a civil right. An omission of a single article would have caused more discontent, than is either felt, or pretended, on the present occasion. A multitude of articles might be the source of infinite controversy, by clashing with the powers intended to be given. To be full and certain, a bill of rights might have cost the convention more time, than was expended on their other work. The very appearance of it might raise more clamour than its omission,—I mean from those, who study pretexts for condemning the whole fabric of the constitution.—'What! (might they say) did these exalted spirits imagine, that the natural rights of mankind depend on their gracious concessions. If indeed they possessed that tyrannic sway, which the Kings of England had once usurped, we might humbly thank them for their *magna charta*, defective as it is. As that is not the case, we will not suffer it to be understood, that their *new-fangled* federal head shall domineer with the powers not excepted by their precious bill of rights. What! If the owner of 1000 acres of land thinks proper to sell one half, is it necessary for him to take a release from the vendee of the other half? Just as necessary is it for the people to have a grant of their natural rights from a government, which derives every thing it has, from the grant of the people.'[''])[2]

This is the only part of his pamphlet, in which Aristides considers the objection arising from the omission of a bill of rights.

I was once greatly amused by the declaration of a young man, who was introduced on the great political theatre at a very early age, ''that he could take almost any new book, and by reading the first sentence, in each chapter, or paragraph, in which new matter is taken up, turning over the leaves one by one, and just glancing his eye down the pages, he could give as good account of the book, as if he had studied it for three months.'' I thought this a most delightful compendious method of attaining science, altho' it did not happen to suit my genius; and my surprise at the number of books, in a variety of languages, which he had read, immediately ceased.

Perhaps this advantageous mode of study has been practised by the Farmer. I am, otherwise at a loss to account for his supposition, that between Sir Robert Filmer and Aristides there is a conformity of doctrine.[3] Is there a single sentence in the above extract, from which a man of candour would infer an opinion of the author, ''that bills of rights have always originated from, or been considered as grants of, the king, or prince; and that the liberties, they secure, are the gracious concessions of the sovereign.''

If the Farmer read the pamphlet at all, he has first perverted the language, which Aristides supposes to be used by objectors, and then considered it as the writer's own opinion. In that very quotation, and in every address on the subject of government, I have invariably maintained, that all free government originates from the people; and the sovereign possesses power only from their grant.

It is a trite remark, that from parts of sentences in holy writ, you may collect the most horrid blasphemy. In like manner, may Aristides be made to give a decided opinion against the proposed plan of government, and a bitter censure on it's framers.

Supposing him to have betrayed that imputed ignorance of English history and English law, no man, with a proper sense of decency would have treated him in the manner of the Farmer. The injustice of imputing to a writer positions, which, it is plain from the context, he never thought of maintaining, is equalled only by the imprudence; and that indeed is not to be accounted for, unless he conceived Aristides either too timid, or too proud, to give him an answer. He has, however, taken an effectual method for attracting attention, by seasoning his piece richly with personal abuse. Had he confined himself merely to his arguments, neither Aristides, nor perhaps any other person, would have bestowed on him a comment.

It is political nonsense, it seems, to aver "that all powers and rights not expressly given, are consequently reserved."[4] I shall not dispute on this position; because it is not mine. I shall notwithstanding maintain, that, the objects of a federal government being limited to the common defence and welfare of the component states; and the legislative power in the proposed constitution being limited to particular subjects, expressly defined; the Congress can no more legislate beyond them, than if it were expressly forbidden by a bill of rights. For instance—should it be absurd enough to enact, that if any person shall traduce another in the public prints, without subscribing his own real name, he shall for ever be disabled from practising in any court within the United States; such an act would have the validity of a law, no more, than if a federal bill of rights had declared inviolable the freedom of the press.

Let us take now a case stated by the Farmer. "Suppose (says he) that an officer of the United States should force the house, the *asylum* of a citizen, by virtue of a general warrant; I would ask, are general warrants illegal, by the constitution of the United States?"[5] I conceive, on the occurrence of such a strange case, the party injured will most clearly have redress in a state court. The Congress has no power to authorize general warrants, unless within it's own exclusive jurisdiction over ten square miles; within which, I do imagine, the Farmer would have no

objection to reside. It can no more authorize general warrants throughout the United States, than if an article in a federal bill of rights should declare general warrants to be oppressive and illegal. An act to authorize general warrants would be agreeable to no power conferred by the constitution.

Suppose now a federal officer, under colour of his legal authority, to commit a daring outrage; may not the party injured obtain redress in a state court?—With submission to all Farmers, and antifederalists, I think, he may.—If a suit be brought, and the defendant attempt to justify, there will be two points for decision.—Did the officer act agreeably to law? Is such law agreeable to the constitution?—In like manner, were there a federal bill of rights, the question before the court would be, is such law agreeable to the bill of rights?—I am under no fear, that any sound lawyer, of a good moral reputation, will say, that, on the defendant's barely producing a federal commission, the action in a state court must of course be dismissed. Away then with ridiculous bugbear, fit only to alarm minds, on which no science has ever dawned!

Aristides did never yet "neglect or despise" any existing bill of rights. Notwithstanding the little respect which has sometimes been paid to the Maryland declaration, by its natural guardians, he prizes it as an asylum, or rather as a sure bulwark against oppression. Is the Farmer ignorant of that gross persecution, sustained by Aristides, for his vindicating that bill of rights? I am sensible, that, without it, there would be no constitutional restraint on the general assembly, and, if this assembly should ever contain a majority of men restrained by neither conscience nor patriotism, it's value will then be more generally known.

The legislature of an independent single state, without this salutary guard, would be indeed, as the parliament of England has been often called, omnipotent. But as I have before declared, and as ought to be most forcibly inculcated, the Congress is a legislative of a peculiar kind; and it can pass laws for only special purposes.

It is indeed impossible to divine, what laws it may frame, in pursuance of its particular powers. It is also impossible to say, what laws may, at all times, be "necessary and proper." But this we may say,—that, in exercising those powers, the Congress cannot legally violate the natural rights of an individual. And this again is all you could say, were there an express constitutional avowal of those rights.—The more I reflect upon the subject, the more I am amazed, that men do not abandon this idle pretext of liberty's being endangered by the want of this avowal! Did they ever attend to this striking consideration,—that Congress, knowing, with what jealousy it's conduct will be watched by each of the single governments, will not dare to oppress the citizens of any?

The cause of an individual would, in a moment, become the cause of a state, and one government would quickly interest the others.

The manner, in which Congress is appointed; the terms upon which it's members are elected; the mutual checks between the branches; the check arising from the president's privilege; the sure pledge we enjoy in the proper interests of the members; all these might nearly reconcile one to the omission of this avowal; if even the powers of Congress had been in other respects as unlimited, as the power of a British parliament.

Against the proposed powers of the Congress, I have heard no argument, which may not fairly be resolved into this.—In as much as the Congress will have no superior, but the people at large, and therefore may abuse it's authority, it should possess no power, but that of requisition, &c. The argument applies just as well against every other species of government. I should imagine, it can influence no man, who reflects on the occasion of calling a convention. That any man can suppose, we should be better without government, or that the union of thirteen states will not be beneficial to them all, I can scarcely believe. And here, that I may not travel over the same ground, I beg leave to refer my readers to an attentive perusal of my pamphlet. By this may they discover a variety of the Farmer's misrepresentations. To discant upon them all, would be a waste of that time, which, I flatter myself, is as precious and employed full as well as the Farmer's.

Aristides is still thoroughly convinced, that the most judicious bill of rights, such as the objectors, would have, if they have any meaning at all, would be unnecessary. The guarantee of a distinct republican government to each state, and a variety of other state rights are expressly provided for, by the proposed constitution. According to my idea, if a bill of rights be requisite to a federal constitution, it is for the purpose of securing the rights of states; and this surely is most effectually done, by the 4th article of the constitution, which may properly be styled a declaration of governmental rights.[6]

I am still satisfied, that, had the convention attempted to ingraft another kind of bill of rights upon their constitution; and to make it full, certain, and agreeable to the citizens of each state; and to provide, that it should not clash with the powers, proper for the federal head; they might have consumed much time, perplexed themselves with much irksome debate, and at length abandoned the design.—The Farmer deems their task the easiest imaginable. That, however, *he*, or I, or any other man, could frame an instrument, which should be unexceptionable, I can no more believe, than I believe, he could digest such articles of a "league, administered by a diet of diplomatic deputies," as would

be preferable to the proposed plan of a federal republic. The misfortune is, that the fabrication of a bill of rights would not be committed to one man, nor to the deputies of one state. Were it even entrusted to the Farmer, in conjunction with that honourable gentleman of Virginia, who has favoured us with a list, they might not easily agree in their report.[7]

I now ask, what natural right of an individual is endangered by the constitution, supposing Congress to oppress, as far as possible, without violating, or exceeding the constitution, as it now stands? When we suppose Congress to tran[s]gress bounds, within which it is clearly intended to be circumscribed, we can have no cause to expect, they will have greater veneration for an instrument, under the denomination of a bill of rights. Nay! a very sensible man once intimated, ''that the constitution of Maryland was indeed binding; but the declaration of rights was only *declaratory.*''—Would the judges, either of state or federal appointment, be farther bound by acts, exceeding the express grant of the people, than by acts contravening the reservations and exceptions in a bill of rights? . . .

1. On 29 February the *Maryland Journal* informed its readers that ''ARISTIDES to the CITIZENS of MARYLAND, will appear in our next.'' For the entire piece, see RCS:Md., 351–60n. ''Aristides'' (Alexander Contee Hanson) answers the criticisms of ''A Farmer'' I, Baltimore *Maryland Gazette*, 15 February (BoR, II, 314–24n).

2. The seven quoted paragraphs in angle brackets are from ''Aristides,'' *Remarks*, 31 January (BoR, II, 300–1).

3. See ''A Farmer'' I, Baltimore *Maryland Gazette*, 15 February, at note 3, and note 3 (BoR, II, 317, 324n).

4. ''Aristides'' asserts that James Wilson is the author of this statement. See *Remarks*, 31 January, at note 11 (BoR, II, 25–28).

5. See ''A Farmer'' I, Baltimore *Maryland Gazette*, 15 February, at note 9 (BoR, II, 321).

6. Article IV, section 4, in which the United States guarantees each state a republican form of government.

7. The reference is to Antifederalist Richard Henry Lee and his 16 October 1787 letter to Virginia Governor Edmund Randolph that was printed on 6 December (BoR, II, 5–12n). See ''One of the People,'' *Maryland Journal*, 25 December, at note 7, and note 7 (RCS:Md., 121, 123n).

The Impartial Examiner I
Virginia Independent Chronicle, 5 March 1788 (excerpt)[1]

. . . Shall you, O Virginians; shall you, I say, after exhibiting such bright examples of true patriotic heroism, suddenly become inconsistent with yourselves; and cease to maintain a privilege so incontestibly your due?—No, my countrymen;—by no means can I conceive that the laudable vigor, which flamed so high in every breast, can have so far evaporated in the space of five years. I doubt not, but you will in

this trying instance acquit yourselves in a manner worthy of your former conduct. It is not to be feared that you need the force of persuasion, to exercise a proper freedom of enquiry into the merits of this proposed plan of government: or that you will not pay a due attention to the welfare of that country, for which you have already so bravely exerted yourselves. Of this I am well assured; and do not wonder when imagination presents to my view the idea of a numerous and respectable body of men reasoning on the principles of this fœderal constitution. If herein I conceive that you are alarmed at the exceedingly high and extensive authority, which it is intended to establish, I cannot but see the strongest reasons for such apprehensions. For a system, which is to supersede the present different governments of the states, by ordaining that "laws made in pursuance thereof shall be supreme, and shall bind the judges in every state, any thing in the constitution or laws of any state to the contrary notwithstanding," must be alarming indeed! What cannot this omnipotence of power effect? How will your bill of rights avail you any thing? By this authority the Congress can make laws, which shall bind all, repugnant to your present constitution—repugnant to every article of your rights; for they are a part of your constitution,—they are the basis of it. So that if you pass this new constitution, you will have a naked plan of government unlimited in its jurisdiction, which not only expunges your bill of rights by rendering ineffectual, all the state governments; but is proposed without any kind of stipulation for any of those natural rights, the security whereof ought to be the end of all governments. Such a stipulation is so necessary, that it is an absurdity to suppose any civil liberty can exist without it. Because it cannot be alledged in any case whatsoever, that a breach has been committed—that a right has been violated; as there will be no standard to resort to—no criterion to ascertain the breach, or even to find whether there has been any violation at all. Hence it is evident that the most flagrant acts of oppression may be inflicted; yet, still there will be no apparent object injured: there will be no unconstitutional infringement. For instance, if Congress should pass a law that persons charged with capital crimes shall not have a *right to demand the cause or nature of the accusation*, shall not be *confronted with the accusers or witnesses, or call for evidence in their own favor*; and a question should arise respecting their authority therein,—can it be said that they have exceeded the limits of their jurisdiction, when *that* has no limits; when no provision has been made for such a right?—When no responsibility on the part of Congress has been required by the constitution? The same observation may be made on any arbitrary or capricious imprisonments *contrary to the law of the land*. The same may be made, if *excessive bail should*

be required; if *excessive fines should be imposed*; if *cruel and unusual punishments should be inflicted*; if *the liberty of the press should be restrained*; in a word—if laws should be made totally derogatory to the whole catalogue of rights, which are now secure under your present form of government. . . .

1. The first two parts of this essay were printed on 20 February (BoR, II, 330–31) and 27 February (RCS:Va., 420–24). For the entire text of this third part, see RCS:Va., 459–66.

Providence, R.I., United States Chronicle, 6 March 1788[1]

A Gentleman of a respectable Character, from the County of Worcester informs, That the Gentlemen from that County who were in the Minority on the great Question of the Federal Constitution in the late Convention of Massachusetts, have, since their Return Home, almost to a Man, conducted with the greatest Propriety—and, agreeably to their Declarations in the Convention, are now endeavouring to convince their Constituents that it is absolutely necessary the Constitution should take Place—advising them peaceably to wait the Meeting of the first Legislature under it, for the Adoption of the proposed Amendments.

1. Reprinted: Boston *American Herald*, 10 March; *Massachusetts Gazette*, 11 March; Portland, Maine, *Cumberland Gazette*, 20 March; *New Hampshire Recorder*, 25 March. The Worcester County delegates to the Massachusetts Convention voted 43 to 7 against ratification of the Constitution.

John Page to Thomas Jefferson
Rosewell, Gloucester County, Va., 7 March 1788 (excerpt)[1]

. . . I have long wished for a leisure Hour to write to you, but really could not command one till now; when by means of an uncommon spell of severe Weather, & a deep Snow, I am caught at Home alone, having left my Family at York, to attend on the Election of Delegates to serve in Convention in June next—I came over, offered my Services to the Freeholders in a long Address which took me an Hour & an half to deliver it, in which I explained the Principles of the Plan of the fœderal Constitution & shewed the Defects of the Confederation declaring myself a Friend to the former; & that I wished it might be adopted without losing Time in fruitless Attempts to make Amendments which might be made with more probability of Success in the Manner pointed out by the Constitution itself—I candidly confessed that I had been at first an Enemy to the Constitution proposed,[2] & had endeavoured to fix on some Plan of Amendments; but finding that

Govr. Randolph, Col. Mason, & Col. Lee differed in their Ideas of Amendments, & not one of them agreed with me in Objections, I began to suspect that our Objections were founded on wrong Principles; or that we should have agreed; & therefore I set to work; & examined over again the Plan of the Constitution; & soon found, that the Principles we had applied were such as might apply to the Government of a single State, but not to the complicated Government, of 13, perhaps 30 States which were to be *united*, so as to be *one* in Interest Strength & Glory; & yet to be severally sovereign & independent, as to their municipal Laws, & local Circumstances (except in a few Instances which might clash with the general Good); that such a general Government was necessary as could command the Means of mutual Support, more effectually than mere Confederacies Leagues & Alliances, that is, a Government which for fœderal Purposes should have all the Activity Secresy & Energy which the best regulated Governments in the World have; & yet that this, should be brought about, without establishg a Monarchy or an Aristocracy; & without violating the [pure?] Principles of democratical Governments. I say I confessed, that, when I considered, that this was to be the Nature of the Government which was necessary to be adopted in the United States I found that the Objections which might be made [– – –] a single State thus governed, would not apply to this great delicate & complicated Machinery of Government, & that the Plan proposed by the Convention was perhaps the best which could be devised. . . .

1. RC, Jefferson Papers, DLC. Printed: Boyd, XII, 650–54. For a longer excerpt from this letter, see RCS:Va., 590–91.

2. Contemporaries expressed different points of view about Page's attitude on the Constitution. On 7 December 1787 Henry Lee wrote James Madison that "The Pages are all zealous abettors of the constitution." Two days later, before he had received Lee's letter, Madison informed Jefferson that John Page was an opponent of the Constitution. But on 14 January 1788 Archibald Stuart wrote Madison that "Mr. Page of Rosewell has become a Convert." (See RCS:Va., 224, 227, 302.)

Philadelphiensis XI

Philadelphia Independent Gazetteer, 8 March 1788 (excerpt)[1]

My Fellow Citizens,

. . . Let us not be deceived by delusive tales, that it shall be amended after the meeting of the first Congress; since it is admitted almost universally that it wants amendments; now is the time to have them done, while we are at peace abroad, and among ourselves. A fragment of liberty cannot remain, if we once set it in motion in its imperfect state. How can we suppose, that the president general, being once in full

possession of his unlimited powers, would deliver them back again to the people; the supposition is preposterous; he must be more than *man* if he would; a more dangerous king is not in the world than he will be; liberty will be lost in America the day on which he is proclaimed, and must be recovered by the *sword*, if ever we are to enjoy it again.

1. This essay was not reprinted. Three days after it appeared, Francis Hopkinson of Philadelphia, writing in the *Independent Gazetteer* as "A.B.," identified "Philadelphiensis" as "no less a personage than BENJAMIN WORKMAN, one of the *well-born tutors in the University of Pennsylvania*." For more on the authorship of the "Philadelphiensis" essays, see the headnote to CC:237. For the entire essay, see CC:609.

Reflection I

Pennsylvania Carlisle Gazette, 12 March 1788 (excerpt)[1]

To the PUBLIC

. . . One great objection to the new constitution is the want of a bill of rights:—Could this be removed, the plan itself would be much easier explained. In every form of government, where the people would have their rights secured and inviolate, it seems necessary that either the power of the rulers should be limitted, or that they should grant to the people certain privileges, of which they will not deprive them. And it certainly will be acknowledged by every lover of free government, that that form which defines & limits the powers of the rulers, is the most productive of the liberty of the people. Now where there is a bill of rights this cannot be the case; for then the rulers must have the exclusive and absolute power over all the liberties and rights of the people, which are not expressly mentioned in that bill of rights; but where there is no bill of rights, and any powers are granted to the rulers, then all that are not expressly given still remain inviolable in the people. Let us illustrate this by a very simple and plain comparison: suppose a farmer wishes to let a part of his farm to a tenant; if he says I lease you this farm, but I reserve such a particular part to myself, then the tenant has undoubtedly all the remainder vested in him. But if he says I lease you such a particular part, then the owner of the farm has an exclusive and absolute right in all the remainder. This is the very case in a plan of government, where the people have any rights granted to them, all that are not expressly mentioned are taken away and wholly exercisable by the rulers. But if any powers are vested in the rulers, then all that are not expressly named are reserved, and still remain in the people.—It may be asked why the people of Great-Britain have a bill of rights? The Magna Charta of Great-Britain was granted by an absolute mon-

arch, who had all the rights of the people in himself, and who in order to ingratiate himself among his subjects, (that he might prevail upon them to grant him certain supplies, which he needed to carry some particular designs into execution,) and also to atone for the oppressions of which he had been guilty, granted them this instrument, which has since been often broken and altered. And it is probable, that were it not for the danger of spreading dissentions, jealousies and fears among the people, it would now be rejected as useless; the form of government being so much altered since the time it was granted. It may be asked why many of the states have bills of rights. Those states retain those bills of rights, either as a badge of British slavery, or from the dread of the dangerous consequences of innovations and changes of government. The federal convention being an epitome of, or the whole people reduced to a small bounds, could not give themselves those rights which they already possessed. They were empowered to define in what manner the people of America were to be governed, to draw a line of separation between the powers which were to be vested in Congress, (to enable them to provide for the common safety,) and those that were still to remain in the people. Now in order to draw this line, it became necessary either to define those powers which were to be vested in Congress, or to enumerate those privileges and rights which were still to remain in the people. The latter they could not do; for who would attempt to define the rights of one freeborn American? Who could enumerate the privileges of those who have bravely exposed their lives and fortunes in the late glorious contest for liberty? In order to have given the people a bill of rights, the Congress ought to have been first established, and all the rights, privileges, and liberties of the people, absolutely vested in them; but the people of America wish not to make their rulers absolute, they wish to circumscribe and limit their powers. But the very supposition of a bill of rights in a democratical or republican form of government, is absurd & foolish. To circumscribe the people with a bill of rights, would be the same thing as to put every person in jail, to secure them from a murderer, or other bad member of society. Therefore a bill of rights in a republican form of government is improper; and the question must now be whether or not in considering the proposed plan, it will appear that the powers granted to the Congress are properly defined & limitted, and whether they are too extensive.

Carlisle, 7th March, 1788.

1. For the entire essay, see RCS:Pa. Supplement, 1012–14. Five essays by "Reflection" were printed in the *Carlisle Gazette* by 7 May 1788.

A Plebeian
Maryland Journal, 14 March 1788 (excerpt)[1]

To the INDEPENDENT ELECTORS *of* PRINCE-GEORGE'*s* COUNTY:

My Fellow-Citizens, At this important crisis, when every patriotic sentiment ought to be called forth and exerted in behalf of our invaluable and dearest privileges, when the nations of Europe are waiting, with admiring anxiety, the issue of our present struggles for a free and equitable government, it is truly piteous to observe, that a very considerable part of the community still appear but too little affected for the momentous result of our approaching councils.

Since the promulgation of the plan of a federal constitution, the public have been amused with a variety of polemical addresses, tending it is to be feared more to bewilder the understandings of a majority of the people, than either to convince them of what is their true interest, or influence them to act, with becoming zeal, their important part in the present great political drama.

We must, however, confess ourselves much indebted to some writers of distinguished merit, for having so ably vindicated the excellence of the proposed system of government, that the meanest capacity, which hath taken any pains for information, may be now convinced of the happy tendency thereof. The nervous,[2] manly, perspicuous arguments of Aristides alone, supercede the necessity of further disquisition, and must prove incontestably convincing to every person, whose heart is not either callous to the interests of his country, or weakly prejudiced by the sentiments of a few selfish ambitious men. It is to be hoped, that the perusal of that patriotic, sensible essay, hath escaped few, who are desirous of being informed in a subject to which they are called to attend, by every interest and incitement that can rouse the attention of men distinguished for their love of freedom.

A writer in the Maryland Gazette, of the 29th ult. under the innocent, unsuspicious signature of Farmer,[3] through the lengthened staples of whose woolly coat, it requires no great sagacity to discover the insidious wolf, disappointed in open attacks, resolving to prowl in the dark; indirectly accusing the framers of the proposed federal constitution with the tyrannical intention of raising and maintaining a standing army, subversive of your liberties—of destroying the security of a bill of rights—and erecting a despotic government "of individuals, not states." He ridicules the weakness of considering these as the effluvia of a chimerical fancy, as bugbears, hobgoblins, &c. but, surely, if ever necromancer had the power of starting demons from the peaceable bowels of the earth, he must.

In order that you may swallow his elaborate declamation with the less scruple, he endeavours to wound the most respectable delegation, that perhaps any country ever trusted with its affairs, through the sides of Aristides, whose sense he perverts to his own inflammatory purpose.

It might justly be accounted presumptuous in one conscious of an infinite inferiority of abilities, to attempt vindicating either that *honourable body*, or Aristides, from charges in every respect so groundless. Should Aristides think this writer worth his notice, the public may rest assured of soon seeing his artful sophistry exposed in its proper colours.

We, of the more ignorant part of the community, must content ourselves with little more than merely observing and detesting such weak, or rather wicked, insinuations; of arguments they merit not the name.

The dullest apprehension, however, may remark, that instead of proving by fair and conclusive reasoning, that the proposed constitution assumes the power, or discovers an intention of maintaining such an armed force as ought to excite our smallest jealousy, he, with an air of vanity, ransacks the records of ancient and modern history, to exhibit a black catalogue of the destructive consequence of standing armies, and the ruin of perverted governments. This may make the ignorant, or timid, stare; but to what more does it amount? Because good governments have been ruined by usurping tyrants, should we reject one equal, if not superior, to any ever known to the world? Because standing armies have been instrumental in the ruin of nations, are we, therefore, to be so distrustful of ourselves, as never to raise, or train in military discipline, a single maniple of our fellow-citizens, even for the most exigent purposes of maintaining peace at home, or commanding respect abroad? *Risum teneatis amici!*[4]

The absurd idea of the federal constitution being a government "of individuals, not states," seems too nugatory to merit a serious reflection. According to the plan of this reforming Farmer, there might, indeed, be a government of states; but many thousand individuals in these, would have no share in that government. Can any thing be more obvious than, in a commonwealth, whose government consists of a delegation of the people, raised by a general and equal representation, that every individual freeman ought to have a suffrage, and be represented; otherwise have no share in the government of that state or country? It is on this account, namely, that the people may enjoy an equal representation, that Britain and Ireland invest the cities and borough-towns in their respective shires or counties, with the distinct privilege of returning members to Parliament.

To alarm the apprehensions of the croud with an intended destruction of their *bill of rights*, when, by the constitution, the executive power is not only liable to impeachment, but so circumscribed, checked and limited, that it is scarce reasonable to imagine it can err, can be supposed to be nothing better than the last resource of a disappointed incendiary. In governments like Britain, where the executive is hereditary, and may probably fall into the hands of a person in every respect disqualified, a bill of rights is considered as necessary to guard the people against the encroachments of the crown. Our constitution hath, in this respect, freed us from the necessity of such a security. Should we hereafter be obliged to have recourse thereto, how does it appear beyond our reach? So long as we are sensible of being the origin of all power; so long as we resolve to be a free, virtuous and independent people; so long shall such principles be the best bill of rights for our security; and so long shall we be able to command it from any delegated administration whatever. . . .

1. On 11 March the *Maryland Journal* announced that "A PLEBEIAN . . . will be inserted in our next." For the entire essay, see RCS:Md., 380–84. "A Plebeian" defended "Aristides" (see *Remarks*, 31 January [BoR, II, 297–301]), while attacking "A Farmer" I and II, which were critical of "Aristides" (see Baltimore *Maryland Gazette*, 15, 29 February [BoR, II, 314–24n, 338–42]).

2. "Nervous" meant strong, vigorous, robust.

3. See "A Farmer" II, Baltimore *Maryland Gazette*, 29 February (BoR, II, 338–42).

4. Latin: "My friends, refrain from laughing" (Horace, *Ars Poetica or Epistle to the Pisos*, line 5).

Sommers

Pittsburgh Gazette, 15 March 1788

TO THE PEOPLE.

Friends and Fellow Citizens, Great pains have been taken, and I am sorry to say unworthy means used to recommend the new unweildy consolidated system of general government and gild its defects. The political bait was prepared with art, and puffed off with all the parade and address generally attendant on stage mountebanks or venders of quack medicine. The new aristocratic system would not only remove all complaints but cure all diseases; the supporters of it, like a Monsieur Buzaglo, a Parisian quack, who solemnly engaged to cure the *gout, rheumatism, palsy, dropsy, king's evil, leoprosy, and all chronic as well as nervous disorders without medicine*, declares that your political liberty is perfectly secure without either a *bill of rights or representation*. Adopt but the glorious constitution, a constitution handed from Heaven, far superior to the production of a weak and mortal man, poverty should then no

longer haunt you with her haggard looks, but wealth and plenty should be your attendants, and all would be well. For some time the infatuation was great, and I trembled for the consequences, but now I fondly hope the tide of political phrenzy has got to its height, and is ebbing towards the beach of policy and reason. What have you heard in support of this system, my fellow citizens, but buffoonery and scurrillity, passionate harangues founded on shallow & selfish principles, & honest men brow beat and insulted by the advocates for power and prerogative. But what is this plan of government offered you, and so warmly recommended? What is it but a plan of accommodation and necessity? this is allowed on all hands; it is even admitted by its advocates. For my own part I have no doubt but that you must ere now have observed its glaring defects and dangerous consequences, and am well convinced that the more seriously you consider its nature and tendency, the more you will be opposed to it. Looking up like a grateful *people* to the *names of some, and opinions of others*, many amongst you have become prejudiced in favor of a plan of government you little understand: but, my fellow citizens, let not gratitude to a *few*, entail misery upon the *many*. If this has been the case, let me entreat you to endeavour to break the political spell which has fettered your understandings, dispel the mist of party prejudice, exercise your own judgements, consult with your friends, and endeavour to take a view of your political liberty, your existence as free men through an impartial mirror and proper medium. You have but one criterion left, and that is a spirited and decided appeal to the legislature by petition, by which means alone your sentiments, your number, your importance can be fully known.[1] Your present example tarnishes your former conduct. You fought bravely and bled freely to secure the blessings of liberty to yourselves and posterity, forfeit not these blessings so hardly earned, by a tame acquiescence to slavery and oppression; such conduct is unbecoming the gallant and free yeomanry of Pennsylvania. It behoves you, therefore, my fellow citizens, to be particularly careful and circumspect in your future conduct, to ponder and deliberate well, and not allow yourselves to be duped or betrayed with *names*, however respectable, by the artful and designing; for believe me, every consideration dear to yourselves, and valuable to your posterity, is engaged in the present contest.

It has been the superior policy of the present popular aristocratic party, in imitation of all other despotic majorities, to precipitate the honest unsuspecting yeomanry of Pennsylvania into a surrender of their rights like thoughtless prodigals, who are often tempted to sign and seal their own ruin over night, and awake to all the anguish of

repentance and dispair in the morning. It is too evident, that they do not wish you should either reason or reflect; they endeavour to dazzle and blindfold your judgement with *names*; to rouse your passions and play on your foibles; to betray your real interests, by creating in your, perhaps, too easy and susceptible minds, a political, enthusiastic debauch, propitious to their own views and wishes.

[a]"O *Washington, Washington*, (exclaims a mercenary hirely, in the Pittsburgh Gazette of the 26th January) why didst thou not accept of all the gold and honors a British monarch had to give thee? Why didst thou not seize on the liberties of America? Why didst thou not distribute thy favors amongst thy faithful, well chosen bands who waited." why did not this sagacious gentleman add, *and are still waiting*, "but thy nod to crown thee with regal power. Who must not then have bended the knee, and cried *God save the king*."

Alarming, indeed, my fellow citizens! such sentiments but too evidently discover the views of the secret junto and their abettors, and is sufficient to awaken the best disposed and most credulous to a sense of their danger, but I hope the independent yeomanry of Pennsylvania are not unacquainted with their rights and privileges. You have fought for and are entitled to a government of *laws*, not of *names*; and your happiness depends upon a *full and unequivocal declaration of those rights and privileges in the most full, explicit, and direct terms*. Does this artful, abstruse, and ambiguous plan of government offered to you by our modern patriots, secure these inestimable blessings? No. You are sacrificing your best birth rights at the shrine of ambition and despotism, and courting popularity *for the day*, to become execrable and miserable *for ever*.

These are the honest suggestions, my fellow citizens, of a man, unconnected with party, and independent in principle, whose wants are gratified, who lives peaceably and plentifully on his farm, by labor and industry, who never wished for more than he acquired, and whose political tenets are not governed by the sallies of *vanity and ambition*, but the admonitions of reason, and a contrite heart.

But what says the virtuous conventional minority, the real friends to liberty and mankind? Thank God we have still many left, pure and untainted, that neither the badness of times, want of money, misfortune nor popular clamour could sway from their duty or tempt them to betray the interest of their fellow citizens.

"I had not the smallest doubt," says this excellent man, Edmund Randolph, of Virginia, whose letter to the house of assembly I have now before me,[2] "but that from the ardour for a reformation in government, the first applause would be loud and profuse. I plainly fore-

saw, that in the dissention of parties, a middle line might probably be interpreted into want of enterprise and decision. But these considerations, how seducing soever, were feeble opponents to the suggestions of my conscience. I was sent to exercise my best judgement, and to exercise it was my firm determination; being instructed by even an imperfect acquaintance with mankind, that self approbation is the only reward which a political career can bestow, and that *popularity* would have been another name for *perfidy*, if to secure it I had given up the *freedom of thinking for myself*." Again, he says, "my opinion always was, and still is, that every citizen of America, *let the cricis* [i.e., *crisis*] *be what it may*, ought to have a full opportunity to propose, through their representatives *any amendments which in his apprehension tends to the public welfare*."

The only check to be found in favor of the democratic principle in this system of government, so warmly recommended, is the house of representatives, which is a *mere shadow*, or as the worthy and patriotic Richard Henry Lee, of the same state, Virginia, with more propriety calls it a "*mere shred, or rag of representation*,"[3] Nothing can be a greater insult to the understandings of the freemen of the United States, for without a *full, fair and equal representation* you cannot enjoy the blessings of civil and religious liberty. If you therefore value these blessings my fellow citizens, support them, for it is better to insist on amendments now, while the passions of men may not be altogether engaged, than coolly to give up your dearest rights, to be regulated by a system of government, so glaringly erroneous and defective. Power once transferred, especially where it will be explained with great latitude, may bring sorrow in the execution. For to say, as too many does, that to prevent anarchy we must sacrifice our liberty, is really and truly saying, that we must *drown* ourselves for fear of being *hanged*. The object of our visionary, pliant politicians, is seemingly to work up your minds, with state nostrums, *into* a political delirium. In this situation you may not unaptly be compared to a sick man, in the transports of agony and phrenzy, when your political physicians may with safety and impunity, *open a vein, and gradually sink you by a loss of blood and spirits, to an abyss of the vilest slavery and misery*.

Nothing, my fellow citizens, can be more certain than this, that in a country so extensive and unbounded as America, the general government proposed, organized as it is, cannot enforce its laws on proper principles, or carry its powers into effect without military aid, which must soon destroy all elective governments in the country, produce tumult, and finally establish despotism. Is it not reasonable, then to conclude, that the general government in the hands of a few, far re-

moved from you, its numbers unknown to you, and none of these elected oftener than once in two years, will be generally forgot, contemned or neglected, and their laws, or rather mandates or ordinances disregarded, unless such a *well chosen trusty band* (as the writer I have quoted speaks of) be continually kept accoutred and equipped, to enforce the execution. This mode may make the government for a time *feared*, but never *respected*. Therefore, my fellow citizens, resistance must ensue: for either neglected laws, or a military execution of them will naturally lead to a revolution, and your political liberty, as free citizens, must be either lost or secured by your own exertions. "Neglected laws," says a judicious writer, "must lead to anarchy and confusion, and a military execution of laws, is only a shorter way to the same point—despotic governments."[4]

Absurd principles, my fellow citizens, have in all quarters of the world, been obtruded on mankind, by political quacks and impostors, to prevent human reason, and juggle them out of their natural privileges. Under many governments that instinct has been stiffled which teaches even animals to resist oppression and tyranny. The *many* by this means have submissively submitted to be vassals to the *few*, who rule them with a rod of iron.

This will be exactly your situation, for you are not only determined to impoverish yourself by the importation of European *gewgaws and trifles*, but must also forsooth, copy her manners, adopt her politics, and *becomes slaves*.

May true knowledge, my fellow citizens, open your eyes, and secure to you the rights to which reasonable beings are entitled: rouse all the powers which latent nature has bestowed on you, to oppose the subversion of social laws: treat with contempt the man that would impose on you by artifice; contemn those mysteries which hold the world in chains and darkness; allow not your credulity to be longer a stumbling block in your way to happiness, but *with one accord reassume the use of your faculties, and again become the admiration of the world, by vindicating like freemen, the honor of the human race.*

Greensburgh, 5th March, 1788.

> (a) Does this writer mean to compliment or insult general Washington. I am persuaded this great and patriotic man would not allow him to tug a trace in his carriage, of this I am well convinced, he would not be admitted to the honor of a place behind it.

1. For the petition campaign to the Pennsylvania Assembly to undo ratification, see RCS:Pa., 709–25.

2. See Edmund Randolph's letter to the Virginia House of Delegates dated 10 October 1787 but published as a pamphlet in late December 1787 (BoR, II, 213, 214).

3. See Richard Henry Lee's letter to Edmund Randolph, 16 October 1787 printed on 6 December 1787 (BoR, II, 9).

4. Quoted from the end of Letter II of the "Federal Farmer" (CC:242, p. 29).

Maryland Journal, 18 March 1788 (excerpt)[1]

ANTIFEDERAL DISCOVERIES. . . .

IV.

That the constitution wanted a bill of rights. Several persons lay claim to this discovery, but notwithstanding its modern date, the author remains unknown. The people who had no intention to *part* with their natural rights, set about examining the *grant* they were about to make, which so far from *conveying them away*, did not even mention them.

V.

That the constitution enabled Congress to keep up a standing army in time of peace.—It was expected this discovery would have done great execution, but the people were of opinion, that their representatives would never be so foolish as to vote for any army when *unnecessary*, and that they would be very unwise to establish a government which would hinder them from having an army when *necessary*.

VI.

That it abolishes the trial by jury in civil causes—We are told that this discovery, made by an obscure writer under the signature of Centinel,[2] was borrowed by a Lawyer,[3] who put his name to it: Upon inquiry, however, it was found, that the constitution went only to enable Congress to make such regulations, respecting actions cognizable in the congressional courts, as would prevent the citizens of one state from any undue advantages over the citizens of another state. . . .

1. For the entire piece, see RCS:Md., 404–6. For a similar newspaper item, see "One of the People," *Maryland Journal*, 25 December 1787 (BoR, II, 209–10n).

2. See "Centinel" I, Philadelphia *Independent Gazetteer*, 5 October 1787 (BoR, II, 21–25).

3. Possibly George Mason, a Virginia delegate to the Constitutional Convention, who included this Antifederalist criticism in his objections to the Constitution, which he formulated even before the Convention adjourned on 17 September 1787. His objections then circulated in manuscript (BoR, II, 30), but they circulated more widely when they were printed in the *Massachusetts Centinel* on 21 November, the *Virginia Journal* on 22 November, and the Winchester *Virginia Gazette* on 23 November (CC:276 A–B).

Pennsylvania Carlisle Gazette, 19 March 1788 (excerpt)[1]

The following letter was received from a Gentleman in Philadelphia, dated Feb. 28, 1788.

Dear SIR, It gave me great pain to find that CARLISLE, above every part of the state should have been the theatre of a violent opposition to the new government.[2] Have the friends of science in Philadelphia—and has the legislature of Pennsylvania bestowed so much labour, and lavished so much money upon your town to so little purpose? I should have rather supposed that the influence of your College[3] would have chased ignorance and folly out of the county of Cumberland.

I wish your people would recollect WHO opposed the establishment of a College in Carlisle—and WHAT the arguments were, they used against it. The same men now fill your county with false and inflammatory publications against the new government. Remember how they told you that the College was a PARTY institution, and that it was intended to destroy the constitution of Pennsylvania.—Has this been the case? Is it not open alike to men of all parties? Have not many of its enemies practically confessed their mistakes by sending their sons to it to be educated? Has it not drawn a good deal of money into your town and county, and made them both known in every part of the United States?

I do not believe the new government to be without some faults.—But whoever saw any thing perfect come from the hands of men, or I might ask further—did the Supreme Being ever make any thing that man did not find fault with?

I wish it was universally impressed upon the minds of your people, that there can be no LIBERTY, where there is no LAW, and that nothing deserves the name of LAW, but that which is certain—and universal in its operation upon all the members of a community.

The clamors that have been raised, from the want of a bill of rights, have been reasoned and ridiculed out of credit in every state in the union. There can be only TWO securities for liberty in any government, viz. REPRESENTATION and CHECKS.[4] By the first the rights of the people, and by the second, the rights of representation are effectually secured. Every part of a free constitution hangs upon these TWO points—and THESE form the two capital features of the proposed government of the United States. Without them, a volume of rights would avail nothing, and with them, a declaration of rights is absurd, and unnecessary—For the PEOPLE where their liberties are committed to an EQUAL REPRESENTATION, and to a COMPOUND legislature (such as we observe in the new government) will always be the sovereigns of their rulers, and hold all their rights in their own hands. To hold them at the mercy of their servants, is disgraceful to the dignity of freemen. Men who call for a bill of rights, have not yet recovered

from the habits they acquired under the monarchical government of Great-Britain.

I have the same opinion with your people, of the danger of trusting arbitrary legislative power to any body of men, but no such power will be committed to our new rulers. Neither the house of representatives—the senate—or the president can perform a SINGLE legislative act by themselves. A hundred principles of action in man will lead them to watch—to check—and to oppose each other, should an attempt be made by either of them upon the liberties of the people. If we may judge of their conduct by what we have too often observed in all the states, the members of the fœderal legislature will much oftener injure their constituents by voting agreeably to their inclinations, than against them. . . .

1. For the entire letter, see RCS:Pa. Supplement, 1064–66. The letter was probably written by Benjamin Rush. See also Rush to Jeremy Belknap, Philadelphia, 28 February 1788 (RCS:Pa. Supplement, 941–42).

2. For the riot in Carlisle, see RCS:Pa., 670–708n, and CC:407.

3. Dickinson College.

4. Benjamin Rush used the same argument in a letter to David Ramsay (BoR, II, 415).

Gazette of the State of Georgia, 20 March 1788 (excerpt)[1]

Extract of a letter from the Hon. WILLIAM PIERCE, *Esq. to* ST. GEORGE TUCKER, *Esq., dated New York, Sept.* 28, 1787. . . .

"Many objections have been already started to the Constitution because it was not founded on a Bill of Rights; but I ask how such a thing could have been effected; I believe it would have been difficult in the extreme to have brought the different states to agree in what probably would have been proposed as the very first principle, and that is, 'that all men are born equally free and independent.' Would a Virginian have accepted it in this form? Would he not have modified some of the expressions in such a manner as to have injured *the strong sense of them*, if not to have buried them altogether in *ambiguity and uncertainty*?

"In my judgment, when there are restraints on power to prevent its invading the positive rights of a people, there is no necessity for any such thing as a Bill of Rights. I conceive civil liberty is sufficiently guarded when personal security, personal liberty, and private property, are made the peculiar care of government. Now the defined powers of each department of the government, and the restraints that naturally follow, will be sufficient to prevent the invasion of either of those rights. Where then can be the necessity for a Bill of Rights? It is with diffidence

I start this question; I confess I cannot help doubting the negative quality which it conveys, as some of the greatest men I ever knew have objected to the government for no other reason but because it was not *bottomed with a Bill of Rights*; men whose experience and wisdom are sufficient to give authority and support to almost any opinion they may choose to advance.

"I set this down as a truth founded in nature, that a nation habituated to freedom will never remain quiet under an invasion of its liberties. The English history presents us with a proof of this. At the Conquest that nation lost their freedom, but they never were easy or quiet until the true balance between liberty and prerogative was established in the reign of Charles the second. The absolute rights of Englishmen are founded in nature and reason, and are coeval with the English Constitution itself. They were always understood and insisted on by them as well without as with a Bill of Rights. This same spirit was breathed into the Americans, and they still retain it, nor will they, I flatter myself, ever resign it to any power, however plausible it may seem. The Bill of Rights was not introduced into England until the Revolution of 1688, (upwards of 600 years after the Conquest) when the Lords and Commons presented it to the Prince and Princess of Orange. And afterwards the same rights were asserted in the Act of Settlement[2] at the commencement of the present century, when the Crown was limited to the House of Hanover. It was deemed necessary to introduce such an instrument to satisfy the public mind in England, not as a bottom to the Constitution, but as a prop to it; and hereafter, if the same necessity should exist in America, it may be done by an act of the Legislature here, so that the Constitution not being founded on a Bill of Rights I conceive will not deprive it at any future time of being propt by one, should it become necessary.

"A defect is found by some people in this new Constitution, because it has not provided, except in criminal cases, for Trial by Jury.[3] I ask if the trial by jury in civil cases is really and substantially of any security to the liberties of a people. In my idea the opinion of its utility is founded more in prejudice than in reason. I cannot but think that an able Judge is better qualified to decide between man and man than any twelve men possibly can be. The trial by jury appears to me to have been introduced originally to soften some of the rigors of the feodal system, as in all the countries where that strange policy prevailed, they had, according to Blackstone, 'a tribunal composed of twelve good men, true *boni homines*, usually the vassals or tenants of the Lord, being the equals or peers of the parties litigant.'[4] This style of trial was evidently meant to give the tenants a check upon the enormous power

and influence of their respective Lords; and, considered in that point of view, it may be said to be a wise scheme of juridical polity; but applied to us in America, where every man stands upon a footing of independence, and where there is not, and I trust never will be, such an odious inequality between Lord and tenant as marked the times of a Regner or an Egbert, is useless, and I think altogether unnecessary; and, if I was not in the habit of respecting some of the *prejudices* of very sensible men, I should declare it ridiculous. An Englishman to be sure will talk of it in raptures; it is a virtue in him to do so, because it is insisted on in Magna Charta (that favorite instrument of English liberty) as the great bulwark of the nation's happiness. But we in America never were in a situation to feel the same benefits from it that the English nation have. We never had any thing like the Norman trial by battel, nor great Lords presiding at the heads of numerous tribes of tenants whose influence and power we wished to set bounds to.

"As to trial by jury in criminal cases, it is right, it is just, perhaps it is indispensable,—the life of a citizen ought not to depend on the fiat of a single person. Prejudice, resentment, and partiality, are among the weaknesses of human nature, and are apt to pervert the judgment of the greatest and best of men. The solemnity of the trial by jury is suited to the nature of criminal cases, because, before a man is brought to answer the indictment, the fact or truth of every accusation is inquired into by the Grand Jury, composed of his fellow citizens, and the same truth or fact afterwards (should the Grand Jury find the accusation well founded) is to be confirmed by the unanimous suffrage of twelve good men, 'superior to all suspicion.' I do not think there can be a greater guard to the liberties of a people than such a mode of trial on the affairs of life and death. But here let it rest." . . .

1. For the entire letter, see CC:634.

2. Passed in 1701.

3. For an extended critique of Pierce's defense of the Constitution's failure to provide for a jury trial in civil cases, see "A Planter," *Gazette of the State of Georgia*, 3 April (BoR, II, 401–3).

4. Blackstone, *Commentaries*, Book III, chapter XXIII, p. 349.

Luther Martin: Address No. II
Maryland Journal, 21 March 1788 (excerpt)

This essay is a continuation of Luther Martin's reply to the Maryland "Landholder No. X," *Maryland Journal*, 29 February (RCS:Md., 342–50n). For Martin's first address, see *Maryland Journal*, 18 March (RCS:Md., 396–403n). Martin's Address No. II was reprinted in three Philadelphia newspapers: *Freeman's Journal*, 2, 9 April (excerpts); *Independent Gazetteer*, 10 April; and *Pennsylvania*

Mercury, 10, 12 April. For the full text of the Address No. II, see RCS:Md., 413–24n.

To the CITIZENS *of* MARYLAND.

In the recognition which the Landholder professes to make "of what occurred to my advantage," he equally deals in the arts of misrepresentation, as while he was "only the record of the bad," and I am equally obliged, from a regard to truth, to disclaim his pretended approbation as his avowed censure.

He declares, that I originated the clause which enacts, 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 the laws of any state to the contrary notwithstanding." To place this matter in a proper point of view, it will be necessary to state, that as the propositions were reported by the committee of the whole house, a power was given to the general government to *negative* the laws passed by the state legislatures—a power which I considered as totally inadmissible;—in substitution of this, I proposed the following clause, which you will find very materially different from the clause adopted by the Constitution, "that the legislative acts of the United States, made by virtue and in pursuance of the articles of the union, and all treaties made and *ratified* under the authority of the United States, shall be the supreme law of the respective states, so far as those acts or treaties shall relate to the said states, or their citizens; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary notwithstanding."[1]

When this clause was introduced, it was not established that *inferior* continental courts should be appointed for trial of all questions arising on treaties and on the laws of the general government,[2] and it was my wish and hope that every question of that kind would have been determined, in the first instance, in the courts of the respective states; had this been the case, the propriety and the necessity that treaties duly made and ratified, and the laws of the general government should be *binding* on the state judiciaries, which were to decide upon them, must be evident to every capacity, while, at the same time, if such treaties or laws were inconsistent with our constitution and bill of rights, the judiciaries of this state would be bound to *reject* the *first* and *abide* by the *last*; since in the form *I* introduced the clause, notwithstanding treaties and the laws of the general government were intended to be superior to the laws of our state government, where they should be opposed to

each other, yet that they were not proposed, nor meant to be superior to our *constitution* and bill of rights. It was afterwards altered and amended (if it can be called an amendment) to the form in which it stands in the system now published,[3] and, as inferior continental, and not state, courts are originally to decide on those questions, it is *now worse* than *useless*; for being so altered as to render the treaties and laws made under the general government superior to our constitution, if the system is adopted, it will amount to a total and unconditional surrender to that government, by the citizens of this state, of every right and privilege secured to them by our constitution, and an express compact and stipulation with the general government, that it may, at its discretion, make laws in direct violation of those rights: But on this subject I shall enlarge in a future number.[4]

That I "voted an appeal should lay to the supreme judiciary of the United States, for the *correction* of all *errors* both in law and fact," in *rendering judgment*, is most true; and it is equally true that if it had been so ordained by the Constitution, the supreme judiciary would only have had an appellate jurisdiction, of the *same nature* with that possessed by our high court of appeals,[5] and could not in any respect intermeddle with any fact decided by a jury; but as the clause now stands, an appeal being given in general terms from the inferior courts, both as to law and fact, it not only doth, but was *avowedly intended* to give a power very different from what our court of appeals, or any court of appeals in the United States or in England enjoys—a power of the most dangerous and alarming nature, that of setting at nought the verdict of a jury, and having the same facts which they had determined, without any regard or respect to their determination, examined and ultimately decided by the judges themselves; and that by judges immediately appointed by the government.

But the Landholder also says, that "I agreed to the clause that declares nine states to be sufficient to put the government in motion."—

I cannot take to myself the merit even of this, without too great a sacrifice of truth.—

It was proposed that if *seven* states agreed, that should be sufficient;—by a rule of convention in filling up blanks, if different numbers were mentioned, the question was always to be taken on the highest: It was my opinion, that to agree upon a ratification of the constitution by any less number than the whole thirteen states, is so directly *repugnant* to our present articles of confederation, and the mode therein prescribed for their alteration, and such a *violation* of the compact which the states, in the most solemn manner, have entered into with each other, that those who could advocate a contrary proposition, ought never to be

confided in and entrusted in public life[6]—I availed myself of this rule, and had the question taken on thirteen, which was rejected—Twelve, eleven, ten and nine were proposed in succession; the last was adopted by a majority of the members—I voted successively for each of these numbers, to prevent a less number being agreed on—Had nine not been adopted, I should on the *same* principle have voted for eight: But so far was I from giving my approbation that the assent of a less number of states than thirteen should be sufficient to put the government in motion, that I most explicitly expressed my sentiments to the contrary, and always intended, had I been present when the ultimate vote was taken on the constitution, to have given it my decided negative, accompanied with a solem[n] protest against it, assigning this reason among others for my dissent. Thus, my fellow-citizens, that candour with which I have conducted myself through the whole of this business, obliges me, however reluctantly, and however "mortifying it may be to my vanity" to disavow all "those greater positive virtues" which the Landholder has so obligingly attributed to me in Convention, and which he was so desirous of conferring upon me as to consider the guilt of misrepresentation and falsehood but a trifling sacrifice for that purpose, and to increase my mortification, you will find I am equally compelled to yield up every pretence, even to those of a negative nature, which a regard to justice has, as he says, obliged him not to omit.—These consist, as he tells us, in giving my entire approbation to the system, as to those parts which are said to endanger a trial by jury, and as to its want of a bill of rights, and in having too much candour there to signify that I thought it deficient in either of these respects:—But how, I pray can the Landholder be *certain* that I deserve this encomium? Is it not possible, as I so frequently exhausted the politeness of the Convention, that some of those marks of fatigue and disgust, with which he intimates I was mortified as oft as I attempted to speak, might, at that time, have taken place, and have been of such a nature as to attract his attention;—or, perhaps, as the Convention was prepared to slumber whenever I rose, the Landholder, among others, might have sunk into sleep, and at that very moment might have been feasting his imagination with the completion of his ambitious views, and dreams of future greatness:—But supposing I never did declare in Convention, that I thought the system defective in those essential points, will it amount to a positive proof that I approved the system in those respects, or that I culpably neglected an indispensable duty? Is it not possible, whatever might have been my insolence and assurance when I first took my seat, and however fond I might be at that time of obtruding my sentiments, that the many rebuffs with which I met—the repeated mortifications I experi-

enced—the marks of fatigue and disgust with which my eyes were sure to be assailed wherever I turned them—one gaping here—another yawning there—a third slumbering in this place—and a fourth snoring in that—might so effectually have put to flight all my original arrogance, that, as we are apt to run into extremes, having at length become convinced of my comparative nothingness, in so august an assembly, and one in which the science of government was so perfectly understood, I might sink into such a state of modesty and diffidence, as not to be able to muster up resolution enough to break the seal of silence and open my lips, even after the rays of light had begun to penetrate my understanding, and in some measure to chase away those clouds of error and ignorance, in which it was enveloped on my first arrival.—Perhaps, had I been treated with a more forbearing indulgence while committing those memorable blunders, for want of a sufficient knowledge in the science of Government, I might, after the rays of light had illuminated my mind, have rendered my country much more important services, and not only assisted in raising some of the pillars, but have furnished the edifice with a new roof of my own construction, rather better calculated for the convenience and security of those who might wish to take shelter beneath it, than that which it at present enjoys.—Or even admitting I was not mortified, as I certainly ought to have been, from the Landholder's account of the matter, into a total loss of speech, was it in me, who considered the system, for a *variety* of reasons, absolutely inconsistent with your political welfare and happiness, a culpable neglect of duty in not endeavouring, and that against every chance of success, to remove one or two defects, when I had before ineffectually endeavoured to clear it of the others, which, therefore, I knew must remain.

But to be serious; as to what relates to the appellate jurisdiction in the extent given by the system proposed, I am positive there were objections made to it, and as far as my memory will serve me, I think I was in the number of those who actually objected; but I am sure that the objections met with my approbation.[7]

With respect to a bill of rights—Had the government been formed upon principles truly federal, as I wished it, legislating over and acting upon the states only in their collective or political capacity, and not on individuals, there would have been no need of a bill of rights, as far as related to the rights of individuals, but only as to the rights of states:—But the proposed constitution being intended and empowered to act not only on states, but also immediately on individuals, it renders a recognition and a stipulation in favour of the rights both of states and of men, not only proper, but in my opinion, *absolutely* necessary.—I

endeavoured to obtain a restraint on the powers of the general government, as to standing armies, but it was rejected.[8] It was my wish that the general government should not have the power of suspending the privilege of the writ of *Habeas Corpus*, as it appears to me altogether unnecessary, and that the power given to it, may and will be used as a dangerous engine of oppression; but I could not succeed.[9]

An honourable member from South-Carolina, most anxiously sought to have a clause inserted, securing the Liberty of the Press, and *repeatedly* brought this subject before the Convention, but could not obtain it.[10]—I am almost positive he made the same attempt to have a stipulation in favour of Liberty of Conscience, but in vain.[11]—The more the system advanced, the more was I impressed with the necessity of not merely attempting to secure a few rights, but of digesting and forming a complete bill of rights, including those of states and of individuals, which should be assented to, and prefixed to the constitution, to serve as a barrier between the general government and the respective states and their citizens; because the more the system advanced, the more clearly it appeared to me that the framers of it did not consider that either states or men had any rights at all, or that they meant to secure the enjoyment of any to either the one or the other; accordingly, I devoted a part of my time to the actually preparing and draughting such a bill of rights, and had it in readiness before I left the Convention, to have laid it before a committee.—I conversed with several members on the subject; they agreed with me on the propriety of the measure, but, at the same time, expressed their sentiments that it would be impossible to procure its adoption if attempted.—A very few days before I left the Convention, I shewed to an honourable member sitting by me, a proposition, which I then had in my hand, couched in the following words, ''Resolved, that a committee be appointed to prepare and report a bill of rights, to be prefixed to the proposed constitution,'' and I then would instantly have moved for the appointment of a committee for that purpose, if he would have agreed to second the motion, to do which he hesitated, not as I understood from any objection to the measure, but from a conviction in his own mind, that the motion would be in vain.[12]

Thus, my fellow-citizens, you see that so far from having no objections to the system on this account, while I was at Convention, I not only then thought a bill of rights necessary, but I took some pains to have the subject brought forward, which would have been done, had it not been for the difficulties I have stated:—At the same time I declare, that when I drew up the motion, and was about to have proposed it to the Convention, I had not the most distant hope it would meet

with success.—The rejection of the clauses attempted in favour of particular rights, and to check and restrain the dangerous and exorbitant powers of the general government from being abused, had sufficiently taught me what to expect:—And from the best judgment I could form while in Convention, I then was, and yet remain, decidedly of the opinion, that ambition and interest had so far blinded the understanding of some of the principal framers of the constitution, that while they were labouring to erect a fabrick by which they themselves might be exalted and benefited, they were rendered insensible to the sacrifice of the freedom and happiness of the states and their citizens, which must, inevitably, be the consequence. . . .

1. Martin's motion, made on 17 July 1787, was adopted *nemine contradicente*. The italics are not in the original motion (Farrand, II, 28–29).

2. On 18 July the Constitutional Convention voted to give Congress the power to create "inferior tribunals." Martin spoke against the proposal. The Convention then revised the language concerning the jurisdiction of the federal judiciary, providing "that the jurisdiction shall extend to all cases arising under the Natl. laws: And to such other questions as may involve the Natl. peace & harmony" (Farrand, II, 45–46).

3. For the evolution of the supremacy clause from 17 July (note 1, above) to the final adoption of the Constitution on 17 September, see CDR, 257, 265, 277, 296.

4. See Luther Martin: Address No. III, *Maryland Journal*, 28 March (BoR, II, 388–93).

5. See Article LVI of the Maryland constitution of 1776 (Thorpe, III, 1700).

6. Despite Martin's adamant support for maintaining the unanimity provision of the Articles of Confederation (Article XIII), the Maryland legislature in a supplemental law passed on 21 January 1785 and in another law passed on 11 March 1786 provided that the Impost of 1781 and the Impost of 1783, respectively, would go into effect when ratified by only twelve states (including Maryland) (*Laws of Maryland* . . . , November 1784 Session [Annapolis, 1785] [Evans 19071], Chapter LXXVII; November 1785 Session [Annapolis, 1786] [Evans 19770], Chapter LXIV).

7. There is no evidence indicating Martin's position on the appellate jurisdiction of the federal judiciary, although one amendment was adopted nine states to one, with Maryland as the only dissenting state (Farrand, II, 437–38).

8. On 18 August Martin and Elbridge Gerry's motion attempting to limit the size of a peacetime army "was disagreed to nem. con." (Farrand, II, 330).

9. On 28 August the clause allowing the suspension of the writ of habeas corpus was adopted seven states to three, with Maryland voting in the majority (BoR, I, 114–15).

10. On 20 August Charles Pinckney of South Carolina presented several propositions, some of which amounted to a bill of rights, to the Convention. One proposition stated that "The liberty of the Press shall be inviolably preserved." Pinckney's "propositions were referred to the Committee of detail without debate or consideration." On 14 September, by which time Martin was no longer in the Convention, Pinckney and Elbridge Gerry moved "that the liberty of the Press should be inviolably observed," and the Convention rejected the motion (Farrand, II, 340–42, 617–18, 620; BoR, I, 126).

11. Pinckney did not include this right among the propositions that he offered on 20 August.

12. Martin left the Convention on 4 September. Eight days later, George Mason said that he "wished the plan had been prefaced with a Bill of Rights, & would second a

motion if made for the purpose.'' Elbridge Gerry then moved that a committee be appointed to prepare a bill of rights. Mason seconded the motion and the Convention rejected it ten states to none (BoR, I, 125).

Philadelphia Freeman's Journal, 26 March 1788[1]

Is there any reason to presume, says a correspondent, that a new Convention will not agree upon a good plan of government? Quite the contrary; for perhaps there never was such a coincidence of sentiment on any occasion as the present; the opponents to the proposed plan, at the same time, in every part of the continent, harmonized in the same objections: Such an uniformity of opposition is without example, and affords the strongest demonstration of its solidity. Their objections, too, are not local, are not confined to the interest of any one particular state, to the prejudice of the rest; but, with a philanthropy and liberality that reflects lustre on humanity, that dignifies the character of America, they embrace the interests and happiness of the whole Union; they do not even condescend to minute blemishes, but shew that the main pillars of the fabric are bad, that the essential principles of liberty, safety and happiness are not to be found in it, that despotism would be the necessary and inevitable consequence of its establishment.

1. Reprinted: *Virginia Centinel*, 9 April.

Luther Martin: Address No. III
Maryland Journal, 28 March 1788[1]

To the CITIZENS *of* MARYLAND.

There is, my fellow-citizens, scarcely an individual of common understanding, I believe, in this State, who is any ways acquainted with the proposed constitution, who doth not allow it to be, in many instances, extremely censurable, and that a variety of alterations and amendments are essentially requisite, to render it consistent with a reasonable security for the liberty of the respective states, and their citizens.

Aristides, it is true, is an exception from this observation; he declares, that ''if the whole matter was left to his discretion, he would not change any part of the proposed constitution;''[2]—whether he meant this declaration as a proof of his *discretion*, I will not say; it will, however, readily be admitted, by most, as a proof of his enthusiastic zeal in favour of the system:—But it would be injustice to that writer not to observe, that if he is as much *mistaken* in the *other* parts of the constitution, as in that which relates to the judicial department,[3] the constitution which he is so earnestly recommending to his countrymen, and on which he

is lavishing so liberally his commendation, is a *thing of his own creation*, and *totally different* from *that* which is offered for your acceptance.—He has given us an explanation of the original and appellate jurisdiction of the judiciary of the general government, and of the manner in which he supposes it is to operate, an explanation so *inconsistent* with the *intention* of its framers, and so *different* from its *true construction*, and from the effect which it will have, should the system be adopted, that I could scarce restrain my astonishment at the error, although I was, in some measure, prepared for it, by his previous acknowledgment, that he did not very well understand that part of the system;[4] a circumstance I apprehended he did not recollect at the time when he was bestowing upon it his dying benediction:—And if one of our judges, possessed of no common share of understanding, and of extensive acquired knowledge, who, as he informs us, has long made the science of government his peculiar study, so little understands the true import and construction of this constitution, and that too in a part more particularly within his own province, can it be wondered at that the people in general, whose knowledge in subjects of this nature is much more limited and circumscribed, should but imperfectly comprehend the extent, operation and consequences of so complex and intricate a system?—and is not this, of itself, a strong proof of the necessity that it should be corrected and amended, at least so as to render it more clear and comprehensible to those who are to decide upon it, or to be affected by it?

But although almost every one agrees the constitution, as it is, to be both defective and dangerous, we are not wanting in characters who earnestly advise us to adopt it, in its present form, with all its faults, and assure us we may safely rely on obtaining, hereafter, the amendments that are necessary:—But why, I pray you, my fellow-citizens, should we not insist upon the necessary amendments being made now, while we have the liberty of acting for ourselves, before the constitution becomes binding upon us by our assent, as every principle of reason, common sense and safety would dictate?—Because, say they, the sentiments of men are so different, and the interests of the different states are so jarring and dissonant, that there is no probability they would agree if alterations and amendments were attempted.—Thus, with one breath, they tell us that the obstacles to any alterations and amendments being agreed to by the states, are so insuperable, that it is vain to make the experiment, while in the next, they would persuade us it is so certain the states will accede to *those* which shall be necessary, and that *they may* be procured even after the system shall be ratified, that we need not hesitate swallowing the poison, from the ease and security

of instantly obtaining the antidote; and they seem to think it astonishing that any person should find a difficulty in reconciling the absurdity and contradiction!

If it is easy to obtain proper amendments, do not let us sacrifice every thing that ought to be dear to freemen, for want of insisting upon its being done, while we have the power.

If the obtaining them will be difficult and improbable, for God's sake do not accept of such a form of government, as without amendments cannot fail of rendering you mere beasts of burthen, and reducing you to a level with your own slaves, with this aggravating distinction, that you *once* tasted the blessings of freedom.

Those who would wish you to believe that the faults in the system proposed are wholly or principally owing to the difference of state interests, and proceed from that cause, are either imposed upon themselves, or mean to impose upon you.—The principal question in which the state interests had any material effect, were those which related to representation, and the number in each branch of the legislature, whose concurrence should be necessary for passing navigation acts, or making commercial regulations.—But what state is there in the union whose interest would prompt it to give the general government the extensive and unlimited powers it possesses in the executive legislature and judicial departments, together with the powers over the militia, and the liberty of establishing a standing army without any restriction?—What state in the union considers it advantageous to its interest, that the President should be re-eligible—the members of both houses appointable to offices—the *judges* capable of holding *other offices* at the will and pleasure of the government, and that there should be no real responsibility either in the President, or in the members of either branch of the legislature?—or what state is there that would have been averse to a bill of rights, or that would have wished for the destruction of jury trial in a great variety of cases, and in a particular manner in *every case*, without exception, where the *government itself is interested?*—These parts of the system, so far from promoting the interest of any state, or states, have an immediate tendency to annihilate *all* the state governments indiscriminately, and to subvert their rights, and the rights of their citizens.—To oppose these, and to procure their alteration, is equally the interest of every state in the union.—The introduction of these parts of the system must not be attributed to the jarring interests of states, but to a very different source—the pride, the ambition and the interest of individuals:—This being the case, we may be enabled to form some judgment of the probability of obtaining a safe and proper system, should we have firmness and wisdom to reject that which is now

offered; and also of the great improbability of procuring any amendments to the present system, if we should weakly and inconsiderately adopt it.

The *bold* and *daring* attempt that has been made to use, for the total annihilation of the states, that power that was delegated for their preservation, will put the different states on their guard. The votaries of ambition and interest being totally defeated in their attempt to establish themselves on the ruins of the states, which they *will be*, if this constitution is rejected, an attempt in which they had more probability of success from the total want of suspicion in their countrymen, than they can have hereafter; they will not hazard a second attempt of the same nature, in which they will have much less chance of success; besides, being once discovered, they will not be confided in. The true interest and happiness of the states and their citizens will, therefore, most probably, be the object, which will be principally sought for by a second convention, should a second be appointed, which, if *really aimed* at, I cannot think very difficult to accomplish, by giving to the federal government sufficient power for every salutary purpose, while the rights of the states and their citizens should be secure from any imminent danger.—But if the arts and influence of ambitious and interested men, even in their present situation, while more on a level with yourselves, and unarmed with any extraordinary powers, should procure you to adopt this system, dangerous as it is admitted to be to your rights, I will appeal to the understanding of every one of you, who will, on this occasion, give his reason fair-play, whether there is not every cause to believe they will, should this government be adopted, with that additional power, consequence and influence it will give them, most easily prevent the necessary alterations which might be wished for, the purpose of which would be directly opposite to their views, and defeat every attempt to procure them.—Be assured, whatever obstacles or difficulties may be at this time in the way of obtaining a proper system of government, they will be increased an hundred fold after this system is adopted.

Reflect also, I entreat you, my fellow-citizens, that the alterations and amendments which are wanted in the present system, are of such a nature as to *diminish* and *lessen*, to *check* and *restrain* the powers of the general government, not to *increase* and *enlarge* those powers:—If they were of the *last* kind, we might safely adopt it, and trust to giving greater powers hereafter, like a Physician who administers an emetick, *ex re nata*, giving a moderate dose at first, and increasing it afterwards as the constitution of the patient may require.—But I appeal to the history of mankind for this truth, *that when once power and authority are*

delegated to a government, it knows how to keep it, and is sufficiently and successfully fertile in expedients for that purpose:—Nay more, the whole history of mankind proves, that so far from parting with the powers actually delegated to it, *government is constantly encroaching on the small pittance of rights reserved by the people to themselves, and gradually wresting them out of their hands, until it either terminates in their slavery, or forces them to arms, and brings about a revolution.*

From these observations it appears to me, my fellow-citizens, that nothing can be more weak and absurd, than to accept of a system that is admitted to stand in need of immediate amendments to render your rights secure; for remember, *if you fail in obtaining them, you cannot free yourselves from the yoke you will have placed on your necks, and servitude must, therefore, be your portion!*

Let me ask you, my fellow-citizens, what you would think of a Physician, who, because you were slightly indisposed, should bring you a dose, which properly corrected with other ingredients might be a salutary remedy, but, of itself was a deadly poison, and with great appearance of friendship and zeal, should advise you to swallow it immediately, and trust to accident for those requisites necessary to qualify its malignity, and prevent its destructive effects?—Would not you reject the advice, in however friendly a manner it might appear to be given, with indignation, and insist that he should first procure, and properly attemper, the necessary ingredients, since after the *fatal draught* was once received into your bowels, it would be too late, should the antidote prove unattainable, and death must ensue?—With the same indignation ought you, my fellow-citizens, to reject the advice of those *political quacks*, who, under pretence of healing the disorders of our present government, would urge you *rashly to gulp down* a constitution, which, in its present form, unaltered and unamended, would be as certain death to your liberty, as *arsenick* could be to your bodies.

Baltimore, March 25, 1788.

1. On 25 March the printer of the *Maryland Journal* indicated that the third number of Martin's address to the citizens of Maryland "*will be inserted in our next.*" The third address printed here was not reprinted in any newspaper.

2. See "Aristides," *Remarks*, 31 January (RCS:Md., 251–52).

3. *Ibid.*, 241–44.

4. *Ibid.*, 241.

A Friend to Equal Liberty
Philadelphia Independent Gazetteer, 28 March 1788

MR. OSWALD, I have discovered the author of Centinel, and the next publication that comes out, I will inform the public of the real

author. For my conscience cannot suffer me to remain silent, while the new constitution is so much abused. And then it is a most dangerous, sacrilegious thing to call on the big men to refund the public dues; I wonder how any body dare do it; this hurts me more than any thing; my conscience is very large, and I would allow common people to be made to refund, but it is a heavy stretch to my conscience to have our grand-men, that could buy the half of us, treated like us little human people.

But the worst consequence of such publications will be that we will have another general convention called; this will be a great sin, a monstrous shame, for we shall then have a bill of rights as long as my arm, or perhaps longer; jury-trial and such things we shall again be troubled with; and the civil law will not be established to the great loss of the lawyers; and the king and standing army will be squeezed out of the constitution; the militia too then cannot be marched against the negroes or Indians: but the worst of all, our property, &c. will not be ready to be taxed by the great people, and all heretics will be secured in their own way of worship. Every ugly fellow too may then complain by means of the press, when perhaps he may be justly corrected by our officers of government.

Amendment

Rhode Island Providence Gazette, 29 March 1788[1]

Mr. CARTER, The following was written for a vote, to have been put into the hands of the moderator on Monday last, by a freeman of this town.—Being casually found, after the writer's name, which appears to have been prefixed, was scratched out, your giving it a place in your next Gazette may tend to shew, that the minds of all the freemen could not have been taken on said day *by yea or nay only*.[2]

AMENDMENT.

—— —— Adopts the Fœderal Constitution, with the following alterations or amendments, viz.

First. The liberty and freedom of the press shall be preserved inviolate (except the States should be invaded by a foreign enemy, and the safety of the Union require secresy) being the grand vehicle of knowledge to the people at large.

Secondly. Universal liberty of conscience shall be allowed, and no one religious sect or denomination of people shall have any preference; but all and every of them shall be protected in the peaceable enjoyment of their religious tenets.

Thirdly. The Senators shall be chosen every second year, by the people at large, in the same manner as the Representatives.

Fourthly. No standing armies shall be kept up in time of peace.

Fifthly. The militia, when called forth, shall not be marched out of the State to which they belong, except some one of the States shall be actually invaded by a foreign enemy, or extreme necessity require it.

Sixthly. No appropriation of money, for the raising and supporting armies, shall be for a longer term than one year.

Seventhly. That Congress do not lay direct taxes, until they have first called on the States to assess and pay their proportions, in such manner as the Legislatures of the States may think best;—but in such case, if any State shall refuse or neglect to pay its proportion, pursuant to such requisition, then Congress may assess and levy such State's proportion, with interest, at six per centum per annum, from the time such requisition was payable.

Eighthly. The fœderal judicial power shall not extend to any actions between citizens of different States, where the matter in dispute doth not amount to the value of one thousand dollars at least.

Ninthly. In civil actions, between citizens of different States, every issue of facts arising in actions at common law, shall be tried by a jury, except by consent of parties.

Tenthly. No person shall be tried for any crime, by which he may incur an infamous punishment, or loss of life, until first indicted by a Grand Jury.

Lastly. That it be explicitly declared, that all powers, not expressly delegated by the aforesaid Constitution, are reserved to the several States; any thing in the abovesaid Constitution, or any clause thereof, to the contrary notwithstanding.

1. Reprinted: Boston *American Herald*, 7 April. Five of the amendments were taken from those proposed by the Massachusetts Convention on 6 February. Amendments 7, 8, 9, 10, and 11 in this essay, respectively, were based on amendments 4, 7, 8, 6, and 1 proposed by the Massachusetts Convention. See BoR, I, 243–45n.

2. A reference to the Rhode Island referendum on the Constitution that occurred on Monday, 24 March 1788, in which freemen could vote only to ratify or reject the Constitution.

A Farmer VI
Baltimore Maryland Gazette, 1 April 1788 (excerpt)[1]

Retired in the country the publication by *Aristides* did not reach the *Farmer* until this moment.[2] The object of the remarks by the *Farmer* was to draw the attention of the public to a question of the greatest magnitude to them and their posterity; and the *cause* in which he has ventured to publish his sentiments is a *cause* of the United States.—The great and manifest defects in the *national* government proposed for

America,—the omission of a declaration to ascertain the *rights* of the several *States*, and the *rights* of *individuals*, the primary object of every good and free government, particularly the trial by jury on suit against a *federal* officer for abuse of authority;—the want of proper checks to prevent the abuse, or annihilation of those rights;—the manifest danger to public liberty from a standing army, without limitation of number, in time of peace;—and the pernicious doctrines of *Aristides;* alone induced the *Farmer* to lay his reflections before the tribunal of public opinion.

It would give the *Farmer* real pain to stain a *public* cause with *private* altercation, and he flatters himself that his candid and impartial readers will admit, that his *first* address, which has given so great offence to *Aristides*, and which he calls abuse, slander, calumny, and a wanton and unprovoked attack on *his good name*, was temperate, moderate, and decent, and even respectful to that writer. The *Farmer* took the liberty to condemn and to expose the doctrines and errors of *Aristides*; but with charity he imputed his opinions to defect of judgment, or want of information. A good and virtuous citizen may, from want of understanding, maintain principles incompatible with the public welfare. If his integrity is not accused he should bear admonition or reproof with temper and moderation. If his opinions are censured he should justify or explain them with candor and decency, and should treat his adversary with respect. If his motives of action are questioned, he should defend himself with dignity and manly firmness, without petulance or asperity, or as *Aristides* recommends, "*he should behave like a gentleman.*" *Personalities* are always odious and can only be *excused* by the imputation of political opinions to improper, unworthy or base motives. The *Farmer* could not possibly entertain any *personal* resentment against *Aristides*. A knowledge by sight and a very few occasional conversations comprehend all the acquaintance between them. The *Farmer* was disposed to think well of *Aristides* from the report of some few of his acquaintance, and not from his own declaration, however solemn, of his immaculate purity, and love of country; for in this degenerate age the integrity and the patriotism of men must be measured by their actions, and not their professions.

The *Farmer* disdains intentionally to *misrepresent Aristides*, he may have been so unfortunate as to have *misunderstood* him. It seems that what the *Farmer* considered as the *opinions* of *Aristides* were only *objections* to a bill of rights by *some æriel forms*, which he has pleased to usher into his drama to close the catastrophe, when from the former character he had assumed, he could not so well appear with the *sword* himself. Why did *Aristides* put *groundless* objections in the mouths of any persons,

which no persons had ever used? What sense is there in making objections of no weight (and which he himself despised) to a bill of rights, under the covert of persons of his own creating?—If the *Farmer* misunderstood *Aristides*, it might have arose from his combining with his *general* doctrine a report of a declaration by him of the respect and regard he would pay to the Maryland bill of rights in his judicial capacity.—The *Farmer* then firmly believed, and he still believes that *Aristides* thought that bills of rights were considered in Europe as grants of Kings. The *Farmer* knew that this had been the language and argument of a Judge of another State.[3] All the arguments of the *Farmer* went to prove that they were not so considered in Europe, attended with the observation that he never knew the doctrine advanced in print, but by *Filmer* and *Aristides*.[4]

Aristides insinuates that the remarks of the *Farmer* on his opinions proceeded from his desire *to pay* COURT to a gentleman who lately held the highest office in the State.[5] This insinuation is as false as it is mean and illiberal. The *Farmer* can respect and esteem the *public* and *private* virtues of a citizen without degrading himself to the lowest servility of the lowest sycophant. The *Farmer* has never dealt in the fulsome language of modern dedications, and if inclined, he could not direct his flatteries to obtain any office civil or military, under the *new* government. The *Farmer* has no wish to conceal himself from the apprehension of censure from an impartial public; and from the resentment of *Aristides* it is impossible he can have any thing to fear. A fancied superiority, and insolence of office gave birth to this unwarrantable suggestion. . . .

1. For the entire essay, see RCS:Md., 462–66.

2. A reference to "Aristides," *Maryland Journal*, 4 March (extra), a lengthy response to the first two numbers of "A Farmer," Baltimore *Maryland Gazette*, 15, 29 February (BoR, II, 359–64, 314–24n, 338–42n, respectively).

3. See "A Farmer" I, Baltimore *Maryland Gazette*, 15 February, at note 11, and note 11 (BoR, II, 322, 324n).

4. See "A Farmer" I, Baltimore *Maryland Gazette*, 15 February, at notes 2 and 3, and notes 2 and 3 (BoR, II, 317, 324n).

5. Possibly a reference to Governor William Smallwood's immediate predecessor, William Paca, who was governor from 1782 to 1785. Paca was an opponent of the Constitution.

A Native of Virginia: Observations upon the Proposed Plan of Federal Government, Petersburg, Va., 2 April 1788 (excerpt)

On 2, 9, and 16 April, the weekly *Virginia Independent Chronicle* of Richmond announced that Hunter and Prentis of the Petersburg *Virginia Gazette* had "Just Published" a pamphlet by "A Native of Virginia." This sixty-six-page work, entitled *Observations upon the Proposed Plan of Federal Government. With an Attempt*

to Answer Some of the Principal Objections that Have Been Made to It (Evans 21264), was available at the *Chronicle* office for a shilling and a half. (No advertisements have been found in the Petersburg *Virginia Gazette* because only the issue of 13 March is extant for March and April.)

According to "A Native of Virginia," his pamphlet "was intended to counteract the misrepresentations of the proposed Federal Government, which the antifederalists have most industriously disseminated in the southern counties. The writer had no idea of publishing any thing upon the subject of the Constitution, till a visit he made to one of those counties, where at the desire of his friend, he was induced to write in haste the pamphlet now offered to the public. It was to have been published [in] time enough to be dispersed before the elections of Convention delegates [3–27 March], but the Printer found it impossible to deliver it in time. The primary intention being thus defeated, it would not have been published at all, had it not been put into the press at the time stipulated. The writer had neither Mr. Mason's, Mr. Gerry's, nor Mr. Lee's objections by him: This it is hoped will be a sufficient apology for its inaccuracies, as far as their objections have been taken notice of. . . . He does not pretend to have gone fully into the objections which have been raised to the government: His design was to obviate only the most popular, and in a manner as popular as he was able."

The identity of "A Native of Virginia" has not been determined. James Madison's copy of the pamphlet, now in the Rare Book Room at the Library of Congress, has a faint pencilled annotation (perhaps by Madison) that could be read as "Mr. Fisher" or "Mr. Tyler" (Evans, *American Bibliography*, VII, 238). Daniel Fisher, a planter-lawyer, was treasurer and the commonwealth's attorney for Greensville, a southern county. He was also a member of the Virginia House of Delegates and the Virginia Convention, where he voted to ratify the Constitution in June 1788. Another copy of the pamphlet, located in the St. George Tucker pamphlets in the Virginia Historical Society, is annotated: "By Burwell Starke." Starke and Tucker attended the College of William and Mary in the early 1770s. Starke, a planter-lawyer from the southern county of Dinwiddie, never sat in the legislature or held an important county office. A last possible author is Edward Carrington, who toured three southern counties early in 1788 to determine the extent of their Antifederalism (RCS:Va., 697–98, note 30).

The pamphlet is divided into several parts. The first part (pages 3–10) examines the reasons for calling the Constitutional Convention, praises its work and members, traces the evolution of the bill of rights in England, and explains why a bill of rights was unnecessary in America. The main portion (pages 10–62) prints almost every clause of the Constitution (in italic type) and after each clause or group of clauses answers the objections raised to them. Sometimes, "A Native of Virginia" replies specifically to criticisms raised by George Mason, Elbridge Gerry, Edmund Randolph, and the "Dissent of the Minority of the Pennsylvania Convention" (BoR, II, 28–31, 50–52, 211–16, 197–203n, respectively). In the third part (pages 62–64), entitled "NOTE," "A Native of Virginia" explains why he has not answered the objections made by Richard Henry Lee (BoR, II, 5–12n). The last two pages of the pamphlet, which are unnumbered, contain the author's reasons for writing the pamphlet and an errata.

For the entire pamphlet, see RCS:Va., 655–98n.

. . . Before we enter into a discussion of the different articles which compose the Constitution, it may not be improper to take into consideration the question respecting a Bill of Rights; which many, from habit and prejudices, rather than from reason, and truth, have thought necessary; and upon the want of it have founded one of their principal objections.

Few people know the origin of the term; still fewer have considered, without prejudice, the necessity of the thing. What is a Bill of Rights? A declaration insisted on by a free people, and recognized by their rulers, that certain principles shall be the invariable rules of their administration; because the preservation of these principles are necessary for the preservation of liberty. If this definition be just; can there be a difference, whether these principles are established in a separate declaration, or are interwoven and made a part of the Constitution itself? Is an infringement of a Bill of Rights by the Governing powers, of more serious consequence, than an infringement of the frame of government? The question carries the answer along with it. That there is no distinction between them is a truth, an attempt to prove which would be an offence against common sense.

Of all the European governments a Bill of Rights is known, I believe, to that of England alone. The cause of this is obvious. The liberty of that country has been procured and established by gradual encroachments upon the regal powers seized by, if not yielded to, the first Prince of the Norman family. The first declaration of this sort found in the history of that government, is the Charter of Hen. the 1st, obtained in consequence of that Monarch's feeble title to the Throne.[1] The frequent infractions of that Charter by Henry himself, as well as by subsequent Monarchs, produced the famous Magna Charta of John [1215], which is generally considered as the foundation of English freedom. But in those ages of darkness, when scarcely a rule of descent was fixed, much less principles in politics established, Charters, or Declarations of Rights, were soon lost sight of, whenever interest induced, and circumstances offered opportunities to the English Princes, to infringe them.

These violations gave rise to the Charter of Hen. 3d,[2] which was of much more importance than any of the preceding; and the discontents and confusions which led to it, in the end gave birth to the House of Commons. From this period some ideas of liberty began to prevail in the nation, but which for a long course of years were obscured by turbulent Barons, long and destructive civil wars,[3] and the arbitrary government of an able line of Princes. The art of printing, the reformation, and the restoration of letters, at length enlightened the minds of

men: Just ideas of liberty now prevailed, and the Commons saw, that if the powers exercised by the Tudors were to continue in their new Sovereigns, all hope of liberty was at an end. Their restless spirit frequently shewed itself during the reign of Elizabeth; but that prudent Princess had the address to allay their fears, and the vigour to repress their spirit. A new and foreign race of Princes now ascend the Throne.[4] The opportunity was not to be lost: Political positions were laid down in, and established by the House of Commons, which were considered by many as extraordinary, as they were true.

James, without the tallents, affected to reign with as high an hand as the Tudors. Charles unfortunately for himself, had been educated in the prejudices of his father. His ill-advised and arbitrary measures, involved him in difficulties which produced the Petition of Right in 1628. In this was set forth the unalienable rights of English-men. New infractions produced new quarrels; which terminated in a total change of government. At the restoration all was joy and festivity. The tide of royalty ran too high, to think of Bills of Rights, or privileges of Englishmen. The conduct of James the 2d, the last King of that ill-fated family, involved the nation in fresh discontents: The Prince of Orange is called to its assistance: The King quits the Kingdom: The Throne is declared vacant; and William ascended it upon terms stipulated in a Bill of Rights [1689]. It may be asked, why did the English consider a Bill of Rights necessary for the security of their liberty? The answer is, because they had no written Constitution, or form of government. For in truth the English Constitution is no more than an assemblage of certain powers in certain persons, sanctified by usage and defined by the authority of the Sovereignty; not by the people in any compact entered into between them and their rulers.

If at the revolution the English had fully marked out the government under which they chose in future to live, without contenting themselves with establishing certain principles, in a Bill of Rights, can there be a doubt, but that such frame of government would have supplied the place of, and rendered unnecessary, a Bill of Rights?

Former Princes had pretended to a divine right of governing: William acknowledged his to flow from the people; and previously to his ascending the Throne, entered into a compact with them, which recognized that just and salutary principle. Had the English at this time limited the regal power in definite terms, instead of satisfying themselves with a Bill of Rights, there would have been an end of prerogative; but they from habit were contented with a Bill of Rights, leaving the prerogative still inaccurately defined, to claim by implication, the exercise of all the powers not denied it by that declaration.

When the United Netherlands threw off their dependence on the Crown of Spain and passed their act of Union, they thought not of any Bill of Rights;[5] because they well knew that the States General could have no right nor pretext to pass the bounds prescribed by that celebrated act: So in the instance before us, Congress have no right, and can have no pretext to pass the bounds prescribed them by this Federal Constitution and the powers conceded to the Federal Government by the respective States, under this government, are as accurately defined, as they possibly could have been in a Declaration of Rights.

When Independence was declared by the Americans, they had no government to controul them: Were free to chuse the form most agreeable to themselves. Six of these States have no Bill of Rights; wisely judging, that such declarations tend to abridge, rather than preserve their liberties. They considered their Constitutions as the evidence of the social compact between the governors and the governed, and the only proof of the rights yielded to the former. In all disputes respecting the exercise of power, the Constitution or frame of government decides. If the right is given up by the Constitution, the governors exercise it; if not, the people retain it. Each of the remaining seven States has a Declaration of Rights, adopted rather from habit arising from the use in the English government, than from its being necessary to the preservation of their liberties.[6] . . .

1. The Coronation Charter or Charter of Liberties granted by Henry I in 1100.

2. The Confirmation of the Charters granted by Henry III in 1265.

3. A reference to the civil wars (also called "The Wars of the Roses") between the houses of York and Lancaster over the throne of England that lasted from 1455 to 1485, at which time Henry Tudor (Henry VII) became King of England.

4. A reference to the House of Stuart. In 1603 James VI of Scotland became James I of England.

5. In 1579 the seven northern provinces of The Netherlands were joined by the Union of Utrecht and two years later they proclaimed their independence from Spain.

6. See note 1 to "One of the People," *Maryland Journal*, 25 December 1787 (BoR, II, 210n). For the text of the revolutionary state constitutions and bills of rights, see BoR, I, 57–113.

Boston Independent Chronicle, 3 April 1788[1]

Extract of a letter from a Gentleman, in one of the Southern States, to his friend in this town, dated March 1, 1788.

"The present calm in Europe, I am well satisfied, will not be of long duration. All accounts agree that the people of Great-Britain, are much dissatisfied with the advantages France gained of them in the late contest, and that they were very much in a temper for *war*, and will it not be extremely difficult for us to remain neuter and pursue our true

interest, unless we shall have a *federal government established* adequate to the regulations of our national affairs, and to controuling effectually the conduct of our own citizens.

"The adoption of the proposed constitution in Massachusetts, has been generally spoken of here, and I believe in the other States, as the decision of the great question; and the principal characters in the opposition, have expressed themselves in favour of adopting the plan in the form in which it was adopted in Massachusetts, carrying the recommended amendments, rather farther than she has done: and many of the ablest supporters of the plan have declared their readiness to meet the opposition on this ground."

1. Reprinted: Massachusetts *Salem Mercury*, 8 April; Northampton, Mass., *Hampshire Gazette*, 9 April (first paragraph only); Springfield, Mass., *Hampshire Chronicle*, 9 April; *New Hampshire Gazette*, 9 April; Portland, Maine, *Cumberland Gazette*, 10 April; Exeter, N.H., *Freeman's Oracle*, 11 April.

A Planter
Gazette of the State of Georgia, 3 April 1788

In a letter published in your paper of the 20th ultimo from a gentleman of this state to his friend in Virginia,[1] on the subject of the new Federal Constitution, I observe a train of reasoning tending to prove that *this* Constitution is the best system that can be formed for the present situation of the United States. The sentiments, generally, of this letter I think just and patriotic, and many of the arguments I am much pleased with; but, when they are taken in the detail, some of them prove, in my opinion, the justice of the old observation which the author has, by his own objections, tacitly applied to some parts of the Constitution—"that perfection is not reasonably to be expected in the productions of human wisdom." His doctrine of juries struck me most forcibly in this sense. He supposes that juries are not necessary in civil, though indispensably so in criminal cases. As I do not possess those sources of knowledge which would enable me to make a satisfactory inquiry into the principles or movements of that extraordinary machine, the feudal system, I will not contend with Mr. P[ierce] as to the origin of juries; yet, had not he given us direct authority for his position, I should have supposed that juries, as we now have them, rather had their origin in the fall, than in the rise or the meridian, of the feudal system; and that it was more to guard against the corruption, the partiality, or the weakness of the judges, than the tyranny of feudal lords; that they were instituted because, under the complete feudal system, the distance between lord and vassal, or lord and slave, which

were synonymous, appears to have been too great to have admitted of a legal equality of condition between the two ranks, which equality the very nature of a jury most fully implies; and because, in that rude and semi-barbarous age which immediately succeeded the abolition of the feudal system, the minds of the most enlightened were not sufficiently expanded by education, nor corrected by the moral principle, to withstand pecuniary temptations, nor to guard against the private biases of the heart. Mr. P. thinks that juries in civil cases derive their respectability from that prejudice which generally gives a weight to ancient customs, but that they are in the eye of reason rather *ridiculous* than necessary in such cases; and that a judge would be more equal to a just determination of all matters between neighbors litigant than any jury of the vicinage could be, but that in criminal cases they are *indispensably necessary*. In criminal cases, where the life of a human being is immediately concerned, that a jury should be more eminently expedient than it might and ought to be in civil cases, I will readily grant; but yet, I do not think that there is that infinite distance between their expedience that he thinks there is. For the history of all free nations, and particularly those of England and America, evince that liberty and property are as dear, or nearly so, to human nature, as life itself; else, why, we might justly inquire, should so many myriads of lives, and millions of money, have been in both countries sacrificed at their shrine?

The superior advantage that a criminal case has of a civil one, in being investigated as it were by a double jury, or, if I may be allowed to speak figuratively, of being passed twice through the fire, fixes a very sufficient distinction between the importance of the two cases, but is by no means an argument against the expediency of a single jury in the civil case. A judge, who has probably resided only in one particular part of a country, and whose knowledge of the individuals who compose the collected community must be very confined, cannot possibly be so well acquainted with the causes and motives of action of *those individuals* as their neighbors who reside in their vicinity, and are personally acquainted with "the parties litigant," must be. He, therefore, in equity, is not competent to so fair a judgment between them as a jury of the vicinage. Besides, a judge, being the servant of the whole community, and a character of high public responsibility, might be so much under the influence of political considerations as to engraft them, perhaps insensibly, on his judicial decisions between individuals, which ought to be abstracted from every principle except those founded on the direct merits of the particular case. Another argument in favor of the necessity of juries in civil cases is the influence of party and faction in all governments, but more particularly in a republican

one, where they often rage with such fury as to subvert every idea of reason and justice. Can, then, any one member of such government be so disinterested and uninfluenced by the views or the passions of such parties and factions as to administer justice with equal impartiality with a jury of twelve men drawn indiscriminately out of the body of a county, and consequently composed, if not of uninfluenced persons, at least of such whose different passions or prejudices will serve as a counterpoise to the views and designs of each other? Surely not.

But after all, who will say that, even in our enlightened age, when the principles of moral rectitude are so well established, and the ideas of true honor so clearly defined, the frail constitution of human nature may not, even in the most exalted characters, be, in particular cases, subject to the baleful influence of self-interest? And if so, then a jury in civil cases is, without any manner of doubt, the only sure palladium of the rights, the liberties, and the property of society.

With respect to the tacit rejection of juries in particular cases in the new Constitution, the foregoing arguments do not generally apply, as some of those cases, whenever they occur, will, I conceive, be ruled by the laws and customs of nations, and others are so defined as to make a trial by a jury of the vicinage impossible; yet I think that this ought not to lessen our respect and attachment to the established doctrine of juries in all cases where they prevail under the British constitution, of which they are, in my opinion, the great principle of life and energy.

1. See an extract of a letter from William Pierce to St. George Tucker, 28 September 1787, that was printed in the *Gazette of the State of Georgia*, 20 March 1788 (BoR, II, 379–81).

Luther Martin: Address No. IV
Maryland Journal, 4 April 1788 (excerpt)[1]

To the CITIZENS of MARYLAND.

If those, my fellow-citizens, to whom the administration of our government was about to be committed, had sufficient wisdom never to err, and sufficient goodness always to consult the true interest of the governed,—and if we could have a proper security that their successors should to the end of time be possessed of the same qualifications, it would be impossible that power could be lavished upon them with too liberal a hand.

Power absolute and unlimited, united with unerring wisdom and unbounded goodness, is the government of the Deity over the universe!—But remember, my fellow-citizens, that the persons to whom you are about to delegate authority, are and will be weak, erring mortals, sub-

ject to the same passions, prejudices and infirmities with yourselves; and let it be deeply engraven on your hearts, that from the first history of government to the present time, if we begin with Nimrod, and trace down the rulers of nations to those who are *now* invested with supreme power, we shall find few, very few, who have made the beneficent Governor of the Universe the model of their conduct, while many are they who, on the contrary, have imitated the demons of darkness.

We have no right to expect that our rulers will be more wise, more virtuous, or more perfect than those of other nations have been, or that they will not be equally under the influence of ambition, avarice, and all that train of baleful passions, which have so generally proved the curse of our unhappy race.

We must consider mankind such as they really are,—such as experience has shewn them to be heretofore, and bids us expect to find them hereafter, and not suffer ourselves to be misled by interested deceivers or enthusiastick visionaries; and therefore in forming a system of government, to delegate no greater power than is *clearly* and *certainly necessary*, ought to be the first principle with every people, who are influenced by reason and a regard for their safety, and in doing this, they ought most solicitously to endeavour so to qualify even that power, by such checks and restraints, as to produce a perfect responsibility in those who are to exercise it, and prevent them from its abuse with a chance of impunity;—since such is the nature of man, that he has a propensity to abuse authority and to tyrannize over the rights of his fellow-men;—and to whomsoever power is given, not content with the actual deposite, they will ever strive to obtain an increase.

Those who would wish to excite and keep awake your jealousy and distrust, are your truest friends;—while they, who speak peace to you when there is no peace—who would lull you into security, and wish you to repose blind confidence in your future governors, are your most dangerous enemies.—Jealousy and distrust are the guardian angels who watch over liberty:—security and confidence are the forerunners of slavery.

But the advocates for the system tell you that we who oppose it, endeavour to terrify you with mere possibilities, which may never be realized, that all our objections consist in saying government *may* do this,—and government *may* do that.—

I will, for argument sake, admit the justice of this remark, and yet maintain that the objections are insurmountable.—I consider it an incontrovertible truth, that whatever by the constitution government even *may* do, if it relates to the *abuse* of power, by acts tyrannical and oppressive, it some time or other *will* do.—Such is the ambition of

man, and his lust for domination, that no power less than that which fixed its bounds to the ocean, can say, to them, "thus far shall ye go and no farther."[2]—Ascertain the limits of the *may*, with ever so much precision, and let them be as extensive as you please, government will speedily reach their utmost verge; nor will it stop there, but soon will overleap those boundaries, and roam at large into the regions of the *may not*.—Those who tell you the government by this constitution *may* keep up a *standing army*,—abolish the trial by jury,—oppress the citizens of the states by its powers over the militia,—destroy the freedom of the press,—infringe the liberty of conscience, and do a number of other acts injurious to and destructive of your rights, yet that it *never will do so*; and that you safely may accept such a constitution, and be perfectly at ease and secure that your rulers will always be so good, so wise, and so virtuous—such emanations of the Deity, that they will never use their power but for your interest and your happiness—contradict the uniform experience of ages, and betray a total ignorance of human nature, or a total want of ingenuity. . . .

1. On 1 April the *Maryland Journal* announced that Martin's Address No. IV "will be inserted in our next." For the entire address, see RCS:Md., 480–85n, CC:662. This address, the last in the series, was reprinted in the Philadelphia *Independent Gazetteer*, 14 April; *New York Journal*, 28 April; and Providence, R.I., *United States Chronicle*, 8 May. For a general discussion of Martin's addresses, see CC:626; and for a spurious address number V, see CC:675.

2. Job 38:11.

George Nicholas to James Madison
Charlottesville, Va., 5 April 1788 (excerpt)[1]

. . . Our friend E: R.[2] talks of a compromise between the friends to the Union, but I know of but one that can safely take place; and that is on the plan of the Massachussetts convention:[3] it appears to me impossible, that another continental convention assembled to deliberate on the whole subject, should ever agree on any general plan. . . .

1. RC, Madison Papers, DLC. Madison received this letter on 7 April and replied the next day (immediately below). For the entire letter, see CC:663.

2. At about this time, items began to appear in the newspapers indicating that Governor Edmund Randolph, who had not signed the Constitution and whose objections to it were published in a pamphlet in December 1787 (BoR, II, 211–16), had become a supporter of it. See CC:663, note 9.

3. The Massachusetts Convention ratified the Constitution on 6 February, recommending nine amendments. They were not a condition of ratification; the state's representatives to the first Congress under the Constitution were enjoined "to exert all their influence, and use all reasonable and legal methods to obtain a ratification" of the amendments (For the Massachusetts amendments, see BoR, I, 243–45n).

James Madison to George Nicholas
Orange, Va., 8 April 1788 (excerpt)[1]

. . . I think entirely with you on the subject of amendments. The plan of Massts. is unquestionably the Ultimatum of the fœderalists. Conditional amendments or a second general Convention will be fatal. The delay only of such experiments is too serious to be hazarded. It is a fact, of which you though probably not a great number may be apprized, that the late Convention were in one stage of the business for several days under the strongest apprehensions of an abortive issue to their deliberations. There were moments during this period at which despair seemed with many to predominate. I can ascribe the final success to nothing but the temper with which the Members assembled, and their ignorance of the opinions & confidence in the liberality of their respective constituents. The circumstances under which a second Convention composed even of wiser individuals, would meet, must extinguish every hope of an equal spirit of accomodation; and if it should happen to contain men, who secretly aimed at disunion, (and such I believe would be found from more than one State) the game would be as easy as it would be obvious, to insist on points popular in some parts, but known to be inadmissible in others of the Union. Should it happen otherwise, and another plan be agreed on, it must now be evident from a view of the objections prevailing in the different States among the advocates for amendments, that the opponents in this State who are attached to the Union and sensible of the necessity of a nervous[2] Government for it, would be more dissatisfied with the result of the second than of the first experiment. . . .

1. RC, Reuben T. Durrett Collection, George Nicholas, Department of Special Collections, University of Chicago Library. For the entire letter, see CC:667. Madison is responding to Nicholas' letter of 5 April (immediately above).

2. At this time, "nervous" meant "strong, vigorous, robust."

Thoughts at the Plough
Pennsylvania Carlisle Gazette, 9 April 1788

To the public.

You have been highly honoured by a rich stroke from the hand of one of our modern writers in Carlisle, under the signature of Reflection. The gentleman introduces himself to the public in a very elegant manner, when he puts it as a question, "whether or not the people have entertained such a high opinion of their own importance and infalliability as to be unwilling to be informed; or if they even were convinced, whether or not a foolish pride of their own good sense and judgement would prevent them from confessing their error.["][1] If by

the people, he means the Federal Convention, who called themselves the people, the question may doubtless be answered in the affirmative? for they shut themselves up from information; but if he means the people at large, or such of them as opposed the new constitution, it may with propriety be answered in the negative; for they have anxiously contended both for time and means of information.

It is evident however, the gentleman entertains a high opinion of his own importance and infalliability, when he prefers his opinion to that of the majority of the thirteen states, in saying "the very supposition of a bill of rights is absurd and foolish;" the gentleman proposes explaining such parts of the constitution as have been chiefly objected to, so as to be comprehensible by the weakest capacity; this the public will be highly indebted to him for; but he must likewise assure them that the new Congress will always adhere to his explanation, for it must be observed the new constitution admits of a variety of explanations. The gentleman considers a bill of rights very dangerous to the liberties of the people; but has not by all his reflection produced an instance wherein their liberties have been hurt by a bill of rights. Politions [i.e., Politicians] do, indeed, differ about this point. Some consider a bill of rights necessary, others not; but few have had the effrontery to say, "it is absurd and foolish." He says where there is a bill of rights ["]the rulers must have the exclusive and absolute power over all the liberties and rights of the people, which are not expressly mentioned in that bill of rights;" and he endeavours to illustrate this by comparison.

I must deny this assertion, and will disprove it by a similar comparison:—Suppose a landlord has three fields, one of which he designs to let upon rent; and says to his intended lessee, I lease you this field, but, pointing to another field, says, I reserve that to myself; and all this time there is nothing said about the third field; the question then would be, whether has the landlord or the tenant the right in that third field, of which there was nothing said? I presume this reflecting gentleman himself would not hesitate to say, that the landlord having the right of the soil by preoccupancy, &c. would easily retain his right. I think by a little attention to the design of government, it will appear, that to have a bill of rights inserted in a constitution, is neither "absurd nor foolish," but on the contrary is reasonable and wise. One great design of government is to secure and defend the rights of the people by proper laws. A political constitution is a rule to make these laws by. Now for a people to demand of the legislature laws for the protection of their rights, and at the same time neglect or refuse to declare what those rights are, is indeed both "absurd and foolish." It is somewhat similar to Nebuchadnezzar's demand; he forgot the dream, yet demanded of his wise men,

both it and the interpretation.[2] I think it is a self-evident truth, that the law makers should know what rights and privileges they are to make laws for the protection of; and as the constitution is their rule, in it those rights ought to be inserted; the people being the sovereign have a right to insert such bills as they please, provided they are not contrary to the law of nature; and their being denied of this right is a deviation from the principles of democracy—The rights of mankind are, perhaps, as well known at this day as they ever were, and yet likewise the science of government as well understood; and yet the line of separation between those rights, which ought to remain in the people, and those necessary to be given up to government is not yet known. It is rare to find two governments, the powers of which are of equal extent. The different situations of countries, the various dispositions of nations, and their various degrees of knowledge and civilization, render it in some degree necessary, that the powers of their governments should be of various extents; and if we confine our ideas to one particular government, we will, even then, find it very difficult to ascertain the exact bounds to which its powers either does, or should extend. It has hitherto been a general disease in governments, for the rulers to extend their powers beyond their due bounds; likewise they frequently retain all power which they once get possession of. Our late Federal Convention affords us a striking instance of the readiness of rulers to embrace all opportunities of over-stretching their power.

It is by steps of this kind that people are reduced to a state of abject slavery; thus we see, that from a state of natural and equal liberty, (which certainly took place at first among men) mankind are now arrived to that degree of inequality that a whole nation will, as it were, tremble at the voice of an individual. Now since it is the case, that rulers have a proness to break over the limits let to them, it behooves the people to use all means and methods to secure to themselves such rights as are not necessary to be given up to government, and to enumerate them in general and comprehensive terms, and likewise such as they resign to government, and thus by a double barrier, set limits both to the rulers and ruled.

N.B. The learned and able discussion of the New Constitution, in the second number, signed Reflection,[3] must remain unnoticed at this time; but the readers are referred to the 117th number of the Carlisle Gazette to a piece signed an Old Whig.[4]

East Pennsbro', April 1st.

1. For "Reflection" I, *Carlisle Gazette*, 12 March 1788, see BoR, II, 368–69. The quoted material is not in the excerpt of "Reflection" I printed in this volume. See RCS:Pa. Supplement, 1012 for the quoted passage.

2. Daniel, 2:1–12.

3. For "Reflection" II, *Carlisle Gazette*, 26 March 1788, see RCS:Pa. Supplement, 1097–99.

4. A reference to "An Old Whig" II, reprinted from the Philadelphia *Independent Gazetteer*, 17 October 1787, which appeared in the *Carlisle Gazette*, 31 October (issue number 117) (CC:170).

Cassius II: To Richard Henry Lee, Esquire
Virginia Independent Chronicle, 9 April 1788 (excerpt)[1]

SIR, *March* 28, 1788.

. . . "There is no restraint," you say, "in form of a bill of rights to secure (what Doctor Blackstone calls) that residuum of human rights, which is not intended to be given up to society, and, which is, not indeed, necessary to be given up for any social purpose. The rights of conscience, the freedom of the press, and the trial by jury are at mercy.["][2] Really, sir, I am at a loss, which to admire the most—the uncommon talent, that you have discovered for inventing objections—or the consummate assurance, with which you have imposed these objections on the public. Alternately impelled by the weakness and fury of your passions, you go on, in a rapid progression, from error to error, without giving your reason a moment's interval, to exert itself. You, certainly, must know, sir, that bills of rights are, only, necessary in those governments, in which, there is a claim of power independent of, and not derived from, the people; such as, the divine and hereditary right claimed by Kings. Six states are destitute of bills of rights, yet they are no less free, than we.[3] The fœderal constitution ought to be considered, as a specification of powers, granted by the people to Congress. Had we received a bill of rights from that body, we should, tacitly, have acknowledged its superiority. But, as Congress can exercise no power, except such as are expressly given to them by the people, a bill of rights is, not only, unnecessary, but, would be, highly dangerous. Because, if an enumeration was made, it might, then be supposed, that every right was given up, but what was reserved. The experience of England proves this. For you know, sir, that it was not, until they had obtained many charters or bills of rights, that they found their liberties secure. The same mode of reasoning may be employed to refute your objection, that "the rights of conscience and the freedom of the press" are not secure. For, as the constitution gives Congress no power over either, it is not to be supposed, that they will dare to exercise any. Your objection, that "the trial by jury is at mercy" may require a little more attention. Our bill of rights, only, declares, that it shall be had in all criminal cases, and ought to be preferred in civil.[4] The fœderal constitution declares, that the trial of all crimes, except in cases of impeachment, shall be by jury, and, also implies, that, when it can be had in civil

controversies, it is preferable. But, it leaves, as it necessarily must, the drawing the particular lines to Congress, because there are many disputes, in every state, which cannot be determined by juries. . . .

1. For the entire piece by "Cassius," see RCS:Va., 713–19n. See RCS:Va., 641–42 for the publication, circulation, and possible authorship of the three "Cassius" essays. For Richard Henry Lee's letter to Governor Edmund Randolph, see BoR, II, 5–12n.

2. See Blackstone, *Commentaries*, Book I, chapter I, 129.

3. See note 1 to "One of the People," *Maryland Journal*, 25 December 1787 (BoR, II, 210n).

4. See the Virginia Declaration of Rights, Articles 8 and 11 (BoR, I, 112, 113).

A Freeholder

Virginia Independent Chronicle, 9 April 1788 (extraordinary) (excerpts)[1]

. . . He will then recollect that republican principles are too well established amongst us; that a love of liberty has taken too deep root in the hearts of Americans, as is evident from the jealous eye with which this constitution is viewed, even to give the least glimpse of hope to the most ambitious, and intrepid tyrant that ever lived, to make an attempt against the sacred rights of the people. He will indeed then laugh at the idea of a tyrant's existing in America, till Americans shall have lost their senses and their virtue; and then indeed, they will find tyrants, and become their slaves, as they will justly deserve to be, in spite of any precautions which can be taken now to prevent it.—He will indeed laugh at all his former suspicions, and had they not proceeded from a laudable motive, he would be almost ashamed, whenever he should reflect on some of them, such for instance as his suspicion, that, because trial by juries in criminal matters is expressly secured to the states by the constitution, it took that mode of trial away in civil cases, by saying nothing about such cases; and that the freedom of the press was endangered because nothing was said about presses—for he will then see that the convention had nothing to do with juries or presses, their business being to form a plan of government suited to the genius and circumstances of the United States, and not to presume to prescribe a bill of rights to a free people; who by no means intended that the convention should say what their rights are, or should be; though they are willing that such of them should be abridged, as might otherwise interfere with the general interests of the United States—he will then be candid enough to suppose, that, as some great lawyers have been of opinion that juries are not the best mode of trial in civil cases, and the time may come when some states may wish to abolish juries, the convention ought to have credit for securing the use of them at all events in criminal cases—and will think it strange, that he ever sus-

pected, that the undoubted rights of freemen, and the bulwark of their liberty could be taken from them by the forced construction which had been put on a few words, and by an unaccountable implication from the omission of others in the place of the constitution. . . .

. . . he will no longer be uneasy at the thoughts of the laws of Congress being superior to the laws of his state; for he will see, that were this not to be the case, they might as well not make laws at all, and Congress must remain the same helpless body it is now, and the states be forever jarring with, and rivalling one another without commerce, or credit; the means of defence at home, or of procuring it abroad—indeed he must acknowledge, even in the height of his jealous frenzy, that if Congress can not enforce the observance of her treaties, no nation will treat with her, and that the situation of America if ever involved in a war would then be truly awful—And as to the power of our assemblies being abridged, he will confess that their power to do every possible good remains, and the power of doing mischief alone is taken from them; that they may make wise and good laws for the regular administration of justice, the preservation of order, the encouragement of commerce, agriculture, manufactures, arts and sciences; that they may watch over the conduct of Congress, and instruct the senate who are their representatives that in fact they are only restrained from making paper a tender for debts of gold and silver; from interfering in sacred contracts between man and man; from laying improper and partial duties on the produce of the farmers and planters labors, and from counteracting the general interest of the United States—His fears on this head will surely vanish when he reflects that the laws of Congress, which too will be framed by a much wiser body of men than any Assembly of the states, must be made pursuant to the fœderal constitution; which in fact expressly declares, in the preamble, that they must be calculated to "*form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to us and our posterity.*" Even the frantic enthusiast with his heated imagination, cannot fancy, after considering this, that religious liberty is endangered, by this constitution; and that Congress will undertake to form a religious establishment; that is, will take a step most likely of all others to *disturb the union; to destroy justice, excite civil commotions and religious feuds, and to annihilate religious liberty*, which too they must know is almost the only kind of liberty that is valued by a great part of their constituents—let not then the honest freeholder, farmer, or planter, be at all alarmed at the objections which they may hear some of their friends make to the new constitution—let them rest assured, that there is not one objection made or can be made which is not either founded on a misconstruction of the words of the

constitution, or, on principles misapplied; or, if founded on truth, which may not be removed by Congress, or by another general convention. . . .

March 3, 1788.

1. For the entire essay, see RCS:Va., 719–30n.

North Carolina Edenton Intelligencer, 9 April 1788

Extract of a letter from a gentleman of Massachusetts. Feb. 20

Dear Sir, "You have doubtless heard that our Convention have ratified the New-Constitution[1]—I will confess to you without a blush, that I was in the Minority, and opposed this new fabric, from a jealousy of its ultimate consequences: this jealousy my friend, is the soul of Republican Governments—Perhaps I may have pushed my doubts too far: indeed I am consoled, and feel less anxiety from the assurances of our President, Governor Hancock, that the necessary amendments would doubtless be the first subject taken up by the New Congress.—In this case our political system will perhaps approach nearer perfection than any other in the world:[2] besides the minds of its present opposers will be calm'd; trade and agriculture will flourish, and every shoulder will be pushing on the wheels of Industry, and all joining hand in hand, in peace and harmony, for the common interests of the United States, without confining our views locally to the State we happen to inhabit. Many doubts arose with the Minority, that the Southern States were more fully Represented in the Grand Convention, than the Northern States; and that of course they had obtained more advantages, but such illiberal jealousies ought I am sensible to be for ever done away.

Yours &c."

1. The Massachusetts Convention ratified the Constitution on 6 February 1788.

2. In proposing nine recommendatory amendments to the Constitution for the consideration of the Massachusetts Convention, Governor John Hancock expressed his opinion that these amendments would be ratified according to the procedure provided for in Article V of the Constitution. In a speech to the Massachusetts legislature on 27 February, Hancock stated, "The amendments proposed by the Convention, are intended to obtain a constitutional security of the principles to which they refer themselves, and must meet the wishes of all the States. I feel myself assured, that they will very early become a part of the Constitution; and when they shall be added to the proposed plan, I shall consider it the most perfect System of government, as to the objects it embraces, that has been known amongst mankind."

A Citizen of the State of Maryland Remarks Relative to a Bill of Rights, Philadelphia, 12 April 1788

The following remarks were included in the pamphlet edition of Luther Martin's Genuine Information published in Philadelphia by Eleazer Oswald on

12 April 1788. For more on the publication of the pamphlet, see the headnote to CC:678.

REMARKS *relative to a* BILL *of* RIGHTS.

It has been asserted by many, that a bill of rights was altogether useless, and in some respects a dangerous experiment; such an opinion is evidently calculated to mislead the people, and to take off the necessary checks from those who will be entrusted with the administration of government.

We are told by that able advocate for constitutional liberty, Lord *Abingdon*, that in every free government "there are found *three principal powers*, the first of these is the *power of the people*; the second, the *power of the constitution*; the third, the *power of the law.*—That the constitution ascertains the reciprocal duties, or several relations subsisting betwixt the *governors* and *governed*; that the law, or third power of the State, maintains the rights, and adjusts the differences arising between individuals, as parts of the same whole."[1]

Thus his Lordship makes a very evident distinction between the constitution and the law; he also calls *the rights of the people* the *substantial parts* of the constitution.

From a perusal of his letter to Mr. *Edward [Edmund] Burke*, it is evident, he considers the constitution, as that power which gives law, or restrains the conduct of the legislature; that as the laws of the land are the rule of action to the people; so the principles of the constitution direct the legislature in their several duties, for the rules of the one are to the other, what the law is to the Judges. In examining the constitution for the United States, as proposed by the late convention, I do not find any explicit declaration respecting the rights of the people, that can be considered as a sufficient guide on these points to the legislature, though they ought to to have been its SUBSTANTIAL parts.

It is true, the legislature may act according to their own principles of equity and reason; but these may differ from real constitutional principles, which should be so particularly expressed, that the constitution might have a controul over the legislature and the law. "My idea of government," says Lord Abingdon, "to speak as a lawyer would do, is, that the legislatures are the *trustees* of the people, the constitution the *deed of gift*, wherein they stood seized to *uses* only, and *those uses being named*, they cannot depart from them; but for their due performance are accountable to those by whose conveyance the trust was made. The *right* is therefore *fiduciary*, the power *limited*; or, as a mathematician would say, more in the road of demonstration; the *constitution* is a *circle*, the *laws* the *radii* of that circle, drawn on its surface with the pen of the legislature, and it is the known quality of a circle that its *radii* cannot

exceed its *circumference*, whilst the people, like the *compasses*, are fixed in the center, and describe the circle."[2]

I do not perceive in the new constitution, *those uses named*, for which the administration of government is entrusted; no directing principles, sufficient for security of life, liberty, property, and freedom in trade; and therefore, as a supplement, a declaration or bill of rights is evidently wanting; otherwise, we shall have a legislature without check or controul; which if it should take place, it would open a door to every species of fraud and oppression.—Should the present system now proposed, pass without amendments, it would immediately constitute an aristocratic tyranny, a many-headed leviathan, an ungovernable monster, without constitutional checks, deplorable and to be deplored, dangerous and destructive, in proportion to the number of which it consists.

An eminent lawyer expressed an idea, which has been re-echoed, and become pretty general, "that what power was not expressly given, was retained by the people."[3]—Another civilian, of equal standing and professional abilities, has asserted the reverse of this proposition, and insisted that what power was not expressly declared, was relinquished and given up:[4]—Since then, the sentiments of men, respectable for their talents, are so discordant on essential points surely, the common people may well be at a loss in a choice of their political guides,—and the safest way for them must be, to insist upon a *solemn declaration* of their rights and privileges, as the *substantial* and unalterable parts of the constitution: for such a *declaration* cannot be prejudicial; but may restrain the growth of despotism, the wantonness of power, and the base, licentious attempts of juvenile, daring ambition.

In fine, let me caution the supreme power, *the people*, to take care how they part with their birth-right; that they do not, like *Esau*, sell it for a *mess of pottage*;[5] and let them reflect, *seriously* reflect, on the inestimable value of the least atom of their liberty; she is more precious than rubies, and all the things that can be desired, are not to be compared unto her.

1. See the Earl of Abingdon, *Thoughts on the Letter of Edmund Burke, Esq; to the Sheriffs of Bristol, on the Affairs of America* (Lancaster, Pa., 1778) (Evans 15740), 13. This pamphlet was first printed in Oxford, England, in 1777. Willoughby Bertie (1740–1799), the fourth Earl of Abingdon, was an active member of the House of Lords and a frequent newspaper political essayist. He criticized Edmund Burke for softening his opposition to British policy toward the American colonies.

2. *Ibid.*, 21.

3. See James Wilson's speech of 6 October 1787 (BoR, II, 25–28).

4. Perhaps a reference to Richard Henry Lee who called for a bill of rights in a 16 October 1787 letter to Governor Edmund Randolph that was printed in the Petersburg *Virginia Gazette* on 6 December 1787 and then widely circulated (BoR, II, 5–12n).

5. Genesis 25:29–34.

Benjamin Rush to David Ramsay
Charleston Columbian Herald, 14 April 1788 (excerpt)

In late March or early April Benjamin Rush of Philadelphia wrote his good friend David Ramsay of Charleston a long letter requesting that Ramsay have it printed. Ramsay extracted the letter and took it "immediately" to the Charleston *Columbian Herald*, in which it appeared on 14 April. (The manuscript of Rush's letter has not been located.) "Agreeably" to Rush's request, Ramsay sent Rush some copies of the newspaper containing the letter (Ramsay to Rush, 21 April, RCS:S.C., 261–62n). On 6 May Rush forwarded one of these copies to another friend, the Reverend Jeremy Belknap of Boston, stating that "As my opinions Upon the subject of the fœderal goverment have been often misrepresented, by our antifœderal Scriblers, I have to beg the favor of you to republish the enclosed extract of one of my letters to my friend Dr Ramsay of Charleston in some of your papers.—It contains my principles fairly stated. I beleive I gave *a part* of them in my last letter to you" (CC:733. Rush probably refers to his letter of 28 February, CC:573.). By the time that Belknap received Rush's request, two Boston newspapers had reprinted the letter. Belknap told Rush that the letter "was much approved" (22 June, Rush Papers, PPL).

The extract of Rush's letter to Ramsay, identifying Rush as the writer, was reprinted in the May issue of the Philadelphia *American Museum* and in eight newspapers by 24 June: Mass. (3), R.I. (1), N.J. (2), Pa. (1), Md. (1). In addition, the London *Gentleman's Magazine* reprinted Rush's letter in June 1788, dating it "*Philadelphia, April* 10." Only the Philadelphia *American Museum* and the two New Jersey newspapers, which appeared after the *Museum*, identified David Ramsay as the recipient of the letter.

Extract of a letter from Dr. RUSH, *of Philadelphia, lately received by [a] gentleman of this city.*

DEAR SIR, "I presume before this time you have heard, and rejoiced in the auspicious events of the ratification of the federal government by *six* of the United States.

"The objections which have been urged against the federal constitution from its wanting a bill of rights, have been reasoned and ridiculed out of credit in every state that has adopted it. There can be only *two* sureties for liberty in any government, viz. *representation* and *checks*.[1] By the first, the rights of the people, and by the second, the rights of representation are effectually secured. Every part of a free constitution hangs upon these two points, and *these* form the two capital features of the proposed constitution of the United States. Without them, a volume of rights would avail nothing, and with them a declaration of rights is

absurd and unnecessary; for the PEOPLE where their liberties are committed to an equal representation, and to a compound legislature (such as we observe in the new government) will always be the sovereigns of their rulers, and hold all their rights in their own hands. To hold them at the mercy of their servants, is disgraceful to the dignity of freemen. Men who call for a bill of rights, have not recovered from the habits they acquired under the monarchical government of Great-Britian. . . .''

1. See BoR, II, 378, for the same argument.

A Citizen of New-York: An Address to the People of the State of New-York, New York, 15 April 1788 (excerpt)

On 15 April Samuel and John Loudon, publishers of the *New York Packet*, advertised that they had ''Just Published'' a pamphlet written by ''A Citizen of New-York.'' The nineteen-page pamphlet was entitled *An Address to the People of the State of New-York, on the Subject of the Constitution, Agreed upon at Philadelphia, the 17th of September, 1787* (Evans 21175). The Loudons asserted that ''This Address is written with candor, and in a manner truly decent and respectful. It contains many serious truths; and is replete with observations worthy the attention of *every* Citizen of America, who is anxious for the welfare of *his country*, at this *important crisis*.'' The advertisement ran almost continuously in the triweekly *New York Packet* until 11 July 1788.

The pamphlet was written by John Jay—a New York City lawyer, the Confederation Secretary for Foreign Affairs, and the author of five numbers of *The Federalist* (CC:201). Jay essentially identified himself as ''A Citizen of New-York'' when he sent a copy of the pamphlet to George Washington on 20 April, five days after it was offered for sale (RCS:N.Y., 963. Jay's draft of this letter was dated 12 April, three days before the Loudons' advertisement [John Jay Papers, NNC].). Jay was identified as either the author or supposed author by Samuel Blachley Webb, a New York City commercial agent; John Vaughan, a Philadelphia merchant; his wife Sarah Jay; and by three newspapers (one as early as 30 April) and the Philadelphia *American Museum* (Webb to Joseph Barrell, 20 April, RCS:N.Y., 964; Vaughan to John Dickinson, 9 June, Dickinson Papers, PPL; and Sarah Jay to John Jay, 19 June [RCS:N.Y. Supplement, 296].). Even though he received the pamphlet from Jay, Washington would only ''conjecture but upon no certain ground'' that Jay was ''A Citizen of New-York'' (to James Madison, 8 June, RCS:Va., 1586).

''A Citizen of New-York'' appeared two weeks before the elections for delegates to the New York Convention (29 April–3 May) and was part of the campaign to elect Federalist delegates. In his letter of 20 April, in which he sent Washington a copy of the pamphlet, Jay appears to explain why he wrote the pamphlet: ''The Constitution still continues to cause great party Zeal and Ferment, and the opposition is yet so formidable that the Issue appears problematical'' (RCS:N.Y., 963. In his retained draft of the letter, Jay described ''the Issue'' as ''~~very~~ problematical'' [John Jay Papers, NNC].). ''A Citizen of New-York'' was a highpoint in the Federalist propaganda campaign to elect Convention delegates, which included the publication of pamphlets, broadsides,

election handbills, newspaper articles, and nomination tickets. This campaign began intensely in early February, after the New York legislature called the Convention and set the dates for the elections.

Wherever "A Citizen of New-York" circulated in New York, it solidified Federalist support for the Constitution and converted some Antifederalists. Writing from New York City, Samuel Blachley Webb declared that the pamphlet "has had a most astonishing influence in converting Antifeoderalists, to a knowledge and belief that the New Constitution was their only political Salvation" (to Joseph Barrell, 27 April, RCS:N.Y., 1509). William Bingham, a Pennsylvania delegate to Congress in New York City, claimed that the pamphlet "has operated very forcibly on the Minds of the People here" (to Tench Coxe, 30 May, Smith, *Letters*, XXV, 130). A reviewer in the April issue of the New York *American Magazine*, probably editor Noah Webster, praised the pamphlet's "moderation of temper, and sound judgement." In particular, he believed that "the author's arguments against appointing a new general Convention for the purpose of altering and amending the constitution, are altogether unanswerable" (RCS: N.Y. Supplement, 261). For more on the the authorship, circulation, and impact of this address and its entire text, see RCS:N.Y., 922–42.

. . . We are told, among other strange things, that the liberty of the press is left insecure by the proposed Constitution, and yet that Constitution says neither more nor less about it, than the Constitution of the State of New-York does.[1] We are told that it deprives us of trial by jury, whereas the fact is, that it expresly secures it in certain cases, and takes it away in none—it is absurd to construe the silence of this, or of our own Constitution, relative to a great number of our rights, into a total extinction of them—silence and blank paper neither grant nor take away any thing. Complaints are also made that the proposed Constitution is not accompanied by a bill of rights; and yet they who make these complaints, know and are content that no bill of rights accompanied the Constitution of this State. In days and countries where Monarchs and their subjects were frequently disputing about prerogative and privileges, the latter often found it necessary, as it were to run out the line between them, and oblige the former to admit by solemn acts, called bills of rights, that certain enumerated rights belonged to the people, and were not comprehended in the royal prerogative. But thank God we have no such disputes—we have no Monarchs to contend with, or demand admissions from—the proposed Government is to be the government of the people—all its officers are to be their officers, and to exercise no rights but such as the people commit to them. The Constitution only serves to point out that part of the people's business, which they think proper by it to refer to the management of the persons therein designated—those persons are to receive that business to manage, not for themselves, and as their own, but as agents and overseers for the people to whom they are constantly responsible, and by whom only they are to be appointed. . . .

1. Neither the New York constitution of 1777 nor New York's Act Concerning Rights of 1787 says anything about the freedom of the press. See BoR, I, 88–90.

A Plebeian: An Address to the People of the State of New-York, New York, 17 April 1788 (excerpt)

On 17 April Thomas Greenleaf of the *New York Journal* announced that a pamphlet—entitled *An Address to the People of the State of New-York: Shewing the Necessity of Making Amendments to the Constitution, Proposed for the United States, Previous to Its Adoption* (Evans 21465)—was "Published this Day." It was available for sale at Greenleaf's New York City printing office and at the shop of Robert Hodge, a New York City printer and bookseller. The advertisement also indicated that the twenty-six-page pamphlet, by "A Plebeian," contained a postscript criticizing *An Address to the People of the State of New-York*, a pamphlet written by "A Citizen of New-York" (John Jay) which had been offered for sale two days earlier (immediately above).

Greenleaf ran the advertisement almost continuously until 26 July in his daily *New York Journal*. Between 11 June and 2 July, the pamphlet was also advertised for the price of two shillings in each issue of the weekly North Carolina *Wilmington Centinel*. In 1789 advertisements appeared in the *New York Journal* on 12 March, and in the Worcester, Mass., *American Herald* on 19, 26 March, and 2, 9 April.

The entire pamphlet was reprinted in four installments in the Philadelphia *Independent Gazetteer* on 23, 24, 27, and 28 May. The editor of the Lansingburgh *Federal Herald* intended to reprint the entire pamphlet, but, after publishing thirteen pages (or about half of the pamphlet) in three installments on 28 April, and 5, 12 May, he discontinued the publication even though he indicated that it was "To be continued."

Paul Leicester Ford identified "A Plebeian" as New York Antifederalist leader Melancton Smith, but he provided no supporting evidence (Ford, *Pamphlets*, 89). Robin Brooks, Smith's biographer, was unable to verify Smith's authorship, but he indicated that the pamphlet's "forceful and unadorned style as well as the point of view closely resembled Smith's rhetoric expressed in speeches at the Poughkeepsie Convention." Brooks, however, warned his readers that the pseudonym "Plebeian" had been used before the Revolutionary War by John Lamb, another New York Antifederalist leader ("Melancton Smith: New York Anti-Federalist, 1744–1798" [Ph.D. diss., University of Rochester, 1964], 159, 173n, 181, 226n).

"A Plebeian" was commented upon in at least three articles. In the April issue of the New York *American Magazine*, a reviewer (probably editor Noah Webster) challenged "A Plebeian's" assertions that Antifederalists were winning the propaganda war, that Federalists supported amendments to the Constitution, that Federalists believed that the Constitution endangered the rights and liberties of the people, and that America was serene and prosperous. "A Pennsylvanian" (Tench Coxe) also contradicted "A Plebeian" by painting a dismal picture of public and private finances. He also chided him for using that pseudonym "in a free and equal government, which rejects every preposterous distinction of blood or titles" (*Pennsylvania Gazette*, 11 June, CC:780).

"Rusticus" defended "A Plebeian." He applauded the attack upon some members of the Constitutional Convention and advised people not to vote for the Constitution merely because great names were associated with its framing. Since the Constitution had so many flaws, asserted "Rusticus," the unanimity of the Constitutional Convention was not a virtue (*New York Journal*, 23 May, RCS:N.Y., 1198–99).

For the text of the entire pamphlet, see CC:689.

. . . POSTSCRIPT. . . .

"We are told, (says he) among other strange things, that the liberty of the press is left insecure by the proposed constitution, and yet that constitution says neither more nor less about it, than the constitution of the state of New-York does. We are told it deprives us of trial by jury, whereas the fact is, that it expressly secures it in certain cases, and takes it away in none, &c. it is absurd to construe the silence of this, or of our own constitution relative to a great number of our rights into a total extinction of them; silence and a blank paper neither grant nor take away any thing."

It may be a strange thing to this author to hear the people of America anxious for the preservation of their rights, but those who understand the true principles of liberty, are no strangers to their importance. The man who supposes the constitution, in any part of it, is like a blank piece of paper, has very erroneous ideas of it. He may be assured every clause has a meaning, and many of them such extensive meaning, as would take a volume to unfold. The suggestion, that the liberty of the press is secure, because it is not in express words spoken of in the constitution, and that the trial by jury is not taken away, because it is not said in so many words and letters it is so, is puerile and unworthy of a man who pretends to reason. We contend, that by the indefinite powers granted to the general government, the liberty of the press may be restricted by duties, &c. and therefore the constitution ought to have stipulated for its freedom. The trial by jury, in all civil cases is left at the discretion of the general government, except in the supreme court on the appellate jurisdiction, and in this I affirm it is taken away, not by express words, but by fair and legitimate construction and inference; for the supreme court have expressly given them an appellate jurisdiction, in every case to which their powers extend (with two or three exceptions) both as to *law and fact*. The court are the judges; every man in the country, who has served as a juror, knows, that there is a distinction between the court and the jury, and that the lawyers in their pleading, make the distinction. If the court, upon appeals, are to determine both the law and the fact, there is no room for a jury, and the right of trial in this mode is taken away.

The author manifests equal levity in referring to the constitution of this state, to shew that it was useless to stipulate for the liberty of the press, or to insert a bill of rights in the constitution. With regard to the first, it is perhaps an imperfection in our constitution that the liberty of the press is not expressly reserved; but still there was not equal necessity of making this reservation in our State as in the general Constitution, for the common and statute law of England, and the laws of the colony are established, in which this privilege is fully defined and secured.[1] It is true, a bill of rights is not prefixed to our constitution, as it is in that of some of the states; but still this author knows, that many essential rights are reserved in the body of it; and I will promise, that every opposer of this system will be satisfied, if the stipulations that they contend for are agreed to, whether they are prefixed, affixed, or inserted in the body of the constitution, and that they will not contend which way this is done, if it be but done. . . .

1. See section 41 of the 1777 constitution (BoR, I, 88–89).

Fabius III
Pennsylvania Mercury, 17 April 1788 (excerpt)

Between 12 April and 1 May, the triweekly *Pennsylvania Mercury* published nine essays of "Fabius" under the title "Observations on the Constitution Proposed by the Federal Convention." The essays were written by John Dickinson of Wilmington, Delaware, at the behest of John Vaughan, a Philadelphia merchant. Dickinson agreed to write the essays provided his authorship remained secret. For the authorship, circulation, and impact of the "Fabius" series, see CC:677.

About the same time that "Fabius" I was published on 12 April (CC:677), Vaughan received the manuscript for number III. After perusing it, Vaughan wrote the author John Dickinson that "I have read the 3d with Satisfaction—It has thrown a *new light* on generally admitted principle & made a happy application of them to the present question—The reasoning is perhaps too close to Catch the *Eye of the people*; but is very well adapted to *command the attention* of those who meet for the express purpose of deliberating upon the Subject—& will not fail of a good effect with those who make principle & not passion regulate their Conduct" ("N.W." to "Mr. Thomas," n.d., Dickinson Papers, PPL). On 17 April Vaughan informed Dickinson that numbers II and III were published and that IV was at the printer (see headnote to CC:684). And after the publication of number IV on 19 April, he sent newspaper copies of III and IV to Dickinson, declaring that "they are admired by all who wish to be *injoind to do right* & Strongly approved of by men of weight & reflection" (CC:693, 694).

"Fabius" III was reprinted in the Baltimore *Maryland Gazette*, 9 May; *Virginia Independent Chronicle*, 14 May; *New Hampshire Spy*, 27 May; *New Hampshire Gazette*,

5 June; Rhode Island *Providence Gazette*, 14 June; and the September issue of the Philadelphia *American Museum*. For the entire essay, see CC:690.

OBSERVATIONS ON THE CONSTITUTION proposed by the FEDERAL CONVENTION.

The Writer of this Address hopes, that he will now be thought so disengaged from the objections against the part of the principle assumed, concerning *the power of the people*, that he may be excused for recurring to his assertion, that—⟨*the power of the people* pervading the proposed system, together with *the strong confederation of the states*, will form an adequate security against *every* danger that has been apprehended.⟩[1]

It is a mournful, but may be a useful truth, that the liberty of *single republics* has generally been destroyed by *some of the citizens*, and of *confederated republics*, by *some of the associated states*.

It is more pleasing, and may be more profitable to reflect, that, their tranquility and prosperity have commonly been promoted, in proportion to the strength of their government for protecting *the worthy* against *the licentious*.

As in forming a political society, each individual *contributes* some of his rights, in order that he may, from *a common stock* of rights, derive greater benefits, than he could from merely *his own*; so, in forming a confederation, each political society should *contribute* such a share of their rights, as will, from *a common stock* of rights, produce the largest quantity of benefits for them.

But, *what is that share?* and, *how to be managed?* Momentous questions! Here, flattery is treason; and error, destruction.

Are they unanswerable? No. Our most gracious Creator does not *condemn* us to sigh for unattainable blessedness: But one thing he *demands*—that we should seek for it in *his* way, and not in *our own*.

Humility and *benevolence* must take place of *pride* and *overweening selfishness*. Reason, then rising above these mists, will discover to us, that we cannot be true to ourselves, without being true to others—that to be solitary, is to be wretched—that to love our neighbours as ourselves, is to love ourselves in the best manner—that is to give, is to gain—and, that we never consult our own happiness more effectually, than when we most endeavour to correspond with the Divine designs, by communicating happiness, as much as we can, to our fellow-creatures. INESTIMABLE TRUTH! sufficient, if they do not barely ask what it is, to melt tyrants into men, and sooth[e] the inflamed minds of a multitude into mildness—⟨sufficient to overflow this earth with unknown felicity⟩[2]—INESTIMABLE TRUTH! which our Maker, in his providence, en-

ables us, not only to talk and write about, but to adopt in practice of vast extent, and of instructive example.

Let us now enquire, if there be not some *principle, simple* as the laws of nature in other instances, from which, as from a source, the many benefits of society are deduced.

We may with reverence say, that our Creator designed men for society, because otherwise they could not be happy. They cannot be happy without freedom; nor free without security; that is, without the *absence of fear*; nor thus secure, without society. The conclusion is strictly syllogistic—that men cannot be free without society. Of course, they cannot be *equally free* without society, which freedom produces the greatest happiness.

As these premises are invincible, we have advanced a considerable way in our enquiry upon this deeply interesting subject. If we can determine, what share of his rights, every individual must contribute to the common stock of rights in forming a society, for obtaining *equal freedom*, we determine at the same time, what share of their rights each political society must contribute to the common stock of rights in forming a confederation, which is only a larger society, for obtaining *equal freedom:* For, if the deposit be not proportioned to the magnitude of the association in the latter case, it will generate the same mischief among the component parts of it, from their inequality, that would result from a defective contribution to association in the former case, among the component parts of it, from their inequality.

Each individual then must contribute such a share of his rights, as is necessary for attaining that SECURITY that is essential to freedom; and he is bound to make this contribution by the law of his nature; that is, by the command of his creator; therefore, *he must submit his will, in what concerns all, to the will of the whole society.* What does he lose by this submission? The power of doing injuries to others—the dread of suffering injuries from them—and, the incommodities of mental or bodily weakness.—What does he gain by it? The aid of those associated with him—protection against injuries from them or others—a capacity of enjoying his undelegated rights to the best advantage—a repeal of his fears—and tranquility of mind—or, in other words, that *perfect liberty* better described in the Holy Scriptures, than any where else, in these expressions—"When *every* man shall *sit* under his vine, and under his fig-tree, and NONE SHALL MAKE HIM AFRAID."[3]

The like submission, with a correspondent expansion and accommodation, must be made between states, for obtaining the like benefits in a confederation. Men are the materials of both. As the largest number is but a junction of units,—a confederation is but an assembly of

individuals. The sanction of that *law* of his nature, upon which the happiness of a man depends in society, must attend him in confederation, or he becomes unhappy; for confederation should promote the happiness of *individuals*, or it does not answer the intended purpose. Herein there is a progression, not a contradiction. As man, he becomes a citizen; as a citizen, he becomes a *federalist*. The generation of one, is not the destruction of the other. He carries into society his naked rights: These thereby improved, he carries into confederation. If that sacred law before mentioned, is not here observed, the confederation would not be *real*, but *pretended*. He would confide, and be deceived.

The dilemma is inevitable. There must either be *one* will, or *several* wills. If but *one* will, *all* the people are concerned; if *several* wills, *few* comparatively are concerned. Surprizing! that this doctrine should be contended for by those, who declare, that the constitution is not founded on a *bottom broad enough*; and, though THE WHOLE PEOPLE of the United States are to be TREBLY represented in it in THREE DIFFERENT MODES of representation, and their servants will have the most advantageous situation and opportunities of acquiring all requisite information for the welfare of *the whole union*, yet insist for a privilege of *opposing, obstructing*, and *confounding* all their measures taken with common consent for the general weal, by the delays, negligences, rivalries, or other selfish views of *parts* of the union.

Thus, while one state should be relied upon by the union for giving aid, upon a recommendation of Congress, to another in distress, the latter might be ruined; and the state relied upon, might suppose, it would gain by such an event.

When any persons speak of a confederation, do they, or do they not acknowledge, that the *whole* is *interested* in the safety of *every* part—in the *agreement* of *parts*—in the *relation* of *parts* to *one another*—*to the whole*—or, to *other societies?* If they do—then, the *authority* of the *whole*, must be co-extensive with its *interests*—and if it is, the *will* of *the whole* must and *ought* in *such cases* to govern.

If they do not acknowledge, that *the whole* is *thus interested*, the conversation should cease. Such persons mean not a confederation, but something else.

As to the idea, that this superintending sovereign will must of consequence destroy the subordinate sovereignties of the several states, it is begging a concession of the question, by inferring that a manifest and great *usefulness* must necessarily end in *abuse*; and not only so, but it requires an extinction of *the principle of all society:* for, the subordinate sovereignties, or, in other words, the undelegated rights of the several states, in a confederation, stand upon the very same foundation with

the undelegated rights of individuals in a society, the *federal sovereign will* being *composed* of the *subordinate sovereign wills* of the several confederated states. If as some persons seem to think, *a bill of rights* is *the best security* of rights, the sovereignties of the several states have *this* best security by the proposed constitution, & more than *this* best security, for they are not barely *declared* to be rights, but are taken into it as *component parts*, for *their* perpetual preservation by *themselves*. In short, the government of each State is, and is to be, *sovereign* and *supreme* in *all* matters that *relate* to each state *only*. It is to be *subordinate* barely in *those* matters that *relate* to *the whole*; and it will be their own faults, if the several states suffer the *federal sovereignty* to interfere in things of their respective jurisdictions. An instance of such interference with regard to *any single state*, will be a dangerous *precedent* as *to all*, and therefore will be guarded against *by all*, as the trustees or servants of the several states will not dare, if they retain their senses, so to violate the *independent sovereignty* of their respective states, that justly darling object of *American* affections, to which they are responsible, besides being endeared by all the charities of life. . . .

1. The text in angle brackets is repeated from "Fabius" II (CC:684).
2. The text in angle brackets does not appear in the *American Museum*.
3. Micah 4:4.

Fabius IV
Pennsylvania Mercury, 19 April 1788 (excerpts)

After "Fabius" IV appeared in print, John Vaughan informed author John Dickinson that essays III and IV "are admired by all who wish to be *injoind to do right* & Strongly approved of by men of weight & reflection" (CC:694). John Vaughan sent copies of this essay to its author John Dickinson and to John Langdon and George Washington (CC:694).

For the entire essay, see CC:693. It was reprinted in the Baltimore *Maryland Gazette*, 20 May; *Virginia Independent Chronicle*, 21 May; *New Hampshire Spy*, 31 May; *New Hampshire Gazette*, 12 June; Rhode Island *Providence Gazette*, 28 June; and the October issue of the Philadelphia *American Museum*.

OBSERVATIONS ON THE CONSTITUTION
proposed by the FEDERAL CONVENTION.

Another question remains. *How are the contributed rights to be managed?* The resolution has been in great measure anticipated, by what has been said concerning the system proposed. Some few reflections may perhaps finish it.

If it can be considered separately, [a] *Constitution* is the *organization* of *the contributed rights* in society. *Government* is certainly the *exercise* of them. It is intended for the benefit of *the governed*; of course can have no just powers but what conduce to *that end*: & the awefulness of the

trust is demonstrated in this—that it is founded on the nature of man, that is, on the will of his MAKER, and is *therefore* sacred.

Let the reader be pleased to consider the writer, as treating of *equal liberty* with reference to the *people* and *states* of United *America*, and their meditated confederation.

If the organization of a constitution be defective, it may be amended.

A good constitution promotes, but not always produces a good administration.

The government must never be lodged in *a single body*. From such an one, with an unlucky composition of its parts, rash, partial, illegal, and when intoxicated with success, even cruel, insolent, & contemptible edicts, may at times be expected. By *these*, if other mischiefs do not follow, the national dignity may be impaired.

Several inconveniences might attend a division of the government into *two* bodies, that probably would be avoided in another arrangement.

The judgment of *the most enlightened* among mankind, confirmed by *multiplied experiments*, points out the propriety of government being committed to such a number of great departments, as can be introduced *without confusion, distinct in office, and yet connected in operation*. It seems to be agreed, that *three* or *four* of these departments are a competent number.

Such a repartition appears well calculated, to encrease the safety and repose of *the governed*, which, with the advancement of their happiness in other respects, are the objects of government; as thereby there will be more obstructions interposed, against errors, feuds, and frauds, in the administration, and the interference of the people need be less frequent. Thus, wars, tumults, and uneasinesses, are avoided. The departments so constituted, may *therefore* be said to be *balanced*.

But, notwithstanding, it must be granted, that a bad administration may take place. What is then to be done? The answer is instantly found—Let the *Fasces* be lowered before—not the *Majesty*, it is not a term fit for mortals—but, before the *supreme sovereignty* of the people. IT IS THEIR DUTY TO WATCH, AND THEIR RIGHT TO TAKE CARE, THAT THE CONSTITUTION BE PRESERVED; or in the *Roman* phrase on perilous occasions—TO PROVIDE, THAT THE REPUBLIC RECEIVE NO DAMAGE.

Political bodies are *properly* said to be *balanced*, with respect to this primary origination and ultimate destination, not to any intrinsic or constitutional properties. It is the power from which they *proceed*, and which they *serve*, that truly and of right *balances* them.

But, as a good constitution not always produces a good administration, a defective one not always excludes it. Thus, in governments very different from those of United *America*, general manners and customs,

improvement in knowledge, and the education and disposition of princes, not unfrequently soften the features, and qualify the defects. Jewels of value are substituted, in the place of the rare and genuine orient of highest price and brightest lustre: and though the sovereigns *cannot* even in their ministers, be brought to account by the governed, yet there are instances of their conduct indicating a veneration for the rights of the people, and an internal conviction of the guilt that attends their violation. Some of them appear to be *fathers of their countries*. Revered princes! *Friends of mankind!* May peace be in their lives, and hope sit smiling[1] in their beds of death.

By this animating, presiding will of the people, is meant a reasonable, not a distracted will. When frensy seizes the mass, it would be madness to think of their happiness, that is, of their freedom. They will infallibly have a *Philip* or a *Cæsar*, to bleed them into soberness of mind. At present we are cool; and let us attend to our business.

Our government under the proposed confederation, will be guarded by a repetition of the strongest cautions against excesses. In the *senate* the *sovereignties* of the several states will be *equally* represented; in *the house of representatives*, the *people* of the whole union will be *equally represented*; and, in the *president*, and the federal independent *judges*, so much concerned in the execution of the laws, and in the determination of their constitutionality, the *sovereignties* of the several states and *the people* of the whole union, will be *conjointly* represented.

Where was there ever or where is there now upon the face of the earth, a government so diversified and attempered? If a work formed with so much deliberation, so respectful and affectionate an attention to the interests, feelings, and sentiments of all United *America*, will not satisfy, what would satisfy all United *America?*

It seems highly probable, that those who would reject this labour of public love, would also have rejected the Heaven-taught institution of trial by jury, had they been consulted upon its establishment. Would they not have cried out, that there never was framed so detestable, so paltry, and so tyrannical a device for extinguishing freedom, and throwing unbounded domination into the hands of the king and barons, under a contemptible pretence of preserving it? What! Can *freedom* be preserved by *imprisoning* its *guardians?* Can *freedom* be preserved, by keeping *twelve* men *closely confined* without *meat, drink, fire*, or *candle*, until they *unanimously agree*, and this to be infinitely repeated? Can *freedom* be preserved, by thus delivering up *a number of freemen* to a monarch and an aristocracy, fortified by dependant and obedient judges and officers, to be shut up, *until under duress they speak as they are ordered?* Why can't the twelve jurors *separate*, after hearing the evidence,

return to their *respective homes*, and there *take time*, and *think* of the matter *at their ease?* Is there not *a variety of ways*, in which causes have been, and can be tried, without this tremendous, *unprecedented* inquisition? Why then is it insisted on; but because the fabricators of it *know* that it *will*, and *intend* that it *shall* reduce the people to slavery? Away with it—Freemen will never be enthralled by so insolent, so execrable, so pitiful a contrivance.

Happily for us our ancestors thought otherwise. They were not so over-nice & curious, as to refuse blessings, because, they might possibly be abused.

They perceived, that the *uses* included were great and manifest. Perhaps they did not foresee, that from this acorn, as it were, would grow up oaks, that changing their native soil for another element, would bound over raging mountains of waters, bestow and receive benefits around the globe, and *secure the just liberties of the nation for a long succession of ages.*[a] As to *abuses*, they trusted to their own spirit for preventing or correcting them: And worthy is it of deep consideration by every friend of freedom, that *abuses* that seem to be but "*trifles*,"[b] may be attended by fatal consequences. What can be "*trifling*," that diminishes or detracts from the only defence, that ever was found against "*open attacks* and *secret machinations.*"[c] It originates from a knowledge of human nature. With a superior force, wisdom, and benevolence united, it rives the difficulties that have distressed, or destroyed the rest of mankind. It reconciles contradictions, immensity of power, with safety of private station. It is ever new & always the same.

Trial by jury and the dependance of taxation upon representation, those corner stones of liberty, were not obtained by *a bill of rights*, or any other records, and have not been and cannot be preserved by them. They and all other rights must be preserved, by soundness of sense and honesty of heart. Compared with *these*, what are a bill of rights, or any characters drawn upon paper or parchment, those frail remembrancers? Do we want to be reminded, that the sun enlightens, warms, invigorates, and cheers? or how horrid it would be, to have his blessed beams intercepted, by our being thrust into mines or dungeons? Liberty is the sun of freemen, and the beams are their rights.

"It is the duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power this valuable palladium in all its rights; to restore it to its antient dignity, if at all impaired by the different value of property, or otherwise deviated from its first institution; to *amend* it, wherever it is *defective*;[d] and above all, to guard with the most jealous circumspection against the new and arbitrary methods of trial, which, under a variety of plausible pretences,

may in time imperceptibly undermine this best preservative of liberty.''(c) Trial by jury is our birth-right; and tempted to his own ruin, by some seducing spirit, must be the man, who in opposition to the genius of United *America*, shall dare to attempt its subversion.

In the proposed confederation, it is preserved inviolable in criminal cases, and cannot be altered in other respects, but when the genius of[2] United *America* demands it.[3]

There seems to be a disposition in men to find fault, no difficult matter, rather than to do right. The works of creation itself have been objected to: and one learned prince declared, that if *he* had been consulted, they would have been improved. With what book has so much fault been found, as with the *Bible?* Perhaps, principally, because it *so clearly and strongly enjoins men to do right.* How many, how plausible objections have been made against it, with how much ardor, with how much pains? Yet, the book has done an immensity of good in the world; would do more, if duly regarded; and might lead the objectors themselves and their posterity to perpetual happiness, if they would value it as they ought. . . .

(a) Blackstone, III, 379.[4]
(b) Idem, IV, 350.[5]
(c) Idem, III, 381.[6]
(d) See an enumeration of *defects* in trials by jury, Blackstone, III, 381.[7]
(e) Idem, IIII, 350.[8]

1. The words ''sit smiling'' are not in the *American Museum* version.

2. The words ''the genius of'' are not in the *American Museum* version.

3. This paragraph was added by John Vaughan. Before Vaughan sent ''Fabius'' IV to the printer, he made some changes in John Dickinson's draft. On 17 April, Vaughan wrote Dickinson: ''You will recollect that I hinted a possibility that part of the last Sentiment, which So nobly winds up what relates to the *Jurys*, might not be So fully comprehended as you wished, you judged the observation to be without foundation & left the Subject as it Stood—Reading it to the friend mentioned by me before, he made the Same observation, '*I* feel what the author wishes, but he will be misunderstood, because immense pains have been taken to misrepresent upon this Subject & the opposition hinges in a great measure upon it'.—Reflecting upon it after he left me, I determined to consult you upon the Subject, but not finding an opportunity & the printer Calling for the paper I presumed to make an addition, which if you do not approve you must pardon for the Zeal which prompted it.'' Because the paragraph Vaughan inserted ''in some measure'' affected the ''Sense'' of some of the text of the preceding paragraph, Vaughan informed Dickinson that he had altered the last word in the preceding paragraph from ''*Change*'' to ''*Subversion.*'' He also told Dickinson ''If you disapprove, & can let me know by tomorrow at 2 O'Clock it will not be too late to alter'' (to ''Mr. Thomas,'' Dickinson Papers, PPL).

4. Blackstone, *Commentaries*, Book III, chapter 23, 379. Describing the English Constitution in a chapter on trial by jury, Blackstone wrote: ''A constitution, that I may venture

to affirm has, under providence, secured the just liberties of this nation for a long succession of ages.''

5. *Ibid.*, Book IV, chapter 27, 344. Blackstone said ''. . . that these inroads upon this sacred bulwark of the nation [i.e., trial by jury] are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern.''

6. *Ibid.*, 343–44. The citation given by ''Fabius'' was incorrect. Blackstone stated: ''So that the liberties of England cannot but subsist, so long as this *palladium* remains sacred and inviolate, not only from all open attacks, (which none will be so hardy as to make) but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial, by justices of the peace, commissioners of the revenue, and courts of conscience.''

7. *Ibid.*, Book III, chapter 23, 381–85. Blackstone enumerated and discussed four defects in the jury system.

8. *Ibid.*, 381. (''Book IIII, 350'' was changed to ''Book III, 381'' in the *American Museum* version.) The italics in the quoted material were inserted by ''Fabius.'' In Blackstone, the words ''valuable palladium'' read ''valuable constitution.''

James Madison to Thomas Jefferson
Orange, Va., 22 April 1788 (excerpt)[1]

. . . The adversaries take very different grounds of opposition. Some are opposed to the substance of the plan; others to particular modifications only. Mr. H—y is supposed to aim at disunion. Col. M—n is growing every day more bitter, and outrageous in his efforts to carry his point; and will probably in the end be thrown by the violence of his passions into the politics of Mr. H—y. The preliminary question will be whether previous alterations shall be insisted on or not? Should this be carryed in the affirmative, either a conditional ratification, or a proposal for a new Convention will ensue. In either event, I think the Constitution, and the Union will be both endangered. It is not to be expected that the States which have ratified will reconsider their determinations, and submit to the alterations prescribed by Virga. and if a second Convention should be formed, it is as little to be expected that the same spirit of compromise will prevail in it as produced an amicable result to the first. It will be easy also for those who have latent views of disunion, to carry them on under the mask of contending for alterations popular in some but inadmissible in other parts of the U. States. . . .

1. RC, Madison Papers, DLC. For the entire letter, see RCS:Va., 744–46. The references in the letter are to Patrick Henry and George Mason.

Peter W. Yates to His Friend in the Country
Albany, N.Y., 24 April 1788 (excerpt)[1]

Dear Sir, I have, some days ago, wrote to you respecting the next election,[2] and now again write to you, in hopes that you will do all in

your power against the new constitution, which is *so dangerous to the rights and liberties of the people, and must cause additional heavy and burthensome taxes and end in tyranny and slavery*, and therefore, should not be adopted, unless previously amended. My dear sir, I know you have interest in your neighborhood, and hope you will exert it in favor of the delegates, senator and assemblymen named in the enclosed.[3] Do not suffer yourself to be deceived by the merchants, who, it seems, will adopt a bad constitution, for the sake of trade. I have no objection against that part of it which respects trade, but there are so many *bad and dangerous clauses* in it, that I would not for the sake of the merchants sacrifice the *rights and liberties of the people*. I shall depend on you to do your best endeavours—and that you will attend at the poll and prevail on my good old friend ———— to use his best interest. . . .

1. Printed in the Troy, N.Y., *Federal Herald*, 19 January 1789, and reprinted in the *New Hampshire Spy*, 3 February; and the *Vermont Gazette*, 4 February. For the entire letter, see RCS:N.Y. Supplement, 375–76.

2. A reference to the 29 April–3 May 1788 election of New York assemblymen, senators and convention delegates.

3. A reference to either the 15 March or 10 April 1788 broadside circular distributed by the Anti-Federal Committee of Albany (RCS:N.Y., 1370–73n, 1379–85). Yates was among the committee members who signed the 10 April circular.

George Washington to John Armstrong, Sr.
Mount Vernon, Fairfax County, Va., 25 April 1788 (excerpt)[1]

. . . That the proposed Constitution will admit of amendments is acknowledged by its warmest advocates but to make such amendments as may be proposed by the several States the condition of its adoption would, in my opinion amount to a compleat rejection of it; for upon examination of the objections which are made by the opponents in different States and the amendments which have been proposed, it will be found that what would be a favourite object with one State is the very thing which is stren[u]ously opposed by another;—the truth is, men are too apt to be swayed by local prejudices, and those who are so fond of amendments which have the particular interest of their own State in view cannot extend their ideas to the general welfare of the Union—they do not consider that for every sacrifice which they make they receive an ample compensation by the sacrifices which are made by other States for their benefit—and that those very things which they give up will operate to their advantage through the medium of the general interest.—In addition to these considerations it should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States.—When I reflect upon these

circumstances I am surprized to find that any person who is acquainted with the critical state of our public affairs, and knows the variety of views, inter[e]sts, feelings and prejudices which must be consulted and conciliated in framing a general Government for these States, and how little propositions in themselves so opposite to each other, will tend to promote that desireable an end, can wish to make amendments the ultimatum for adopting the offered system.

1. FC, Washington Papers, DLC. For the entire letter, see CC:706.

A Farmer VII (Part 6)
Baltimore Maryland Gazette, 25 April 1788[1]

(*Continued from our last.*)

Will then the proposed national government provide a proper remedy for these defects?—I do not hesitate to declare, that in my judgment, without considerable amendments, the remedy will prove infinitely worse than the disease.—In the first place, it is undeniably the worse constitution in North-America, excepting that of Georgia—It has every defect which all the others labour under, and considerably increased; for all the vices of representation become more dangerous in proportion to the extent of territory and variety of interests represented. The qualified negative of the President is more than overbalanced by his junction with the aristocratic branch—indeed the difficulties attending, the making of any government at all, upon republican principles for so extensive a continent, rendered it but a patched up affair even on paper. To have agreed upon any one plan, was beyond all human calculation—and their attention to the perfecting of the system was prevented by a constant endeavour to keep it together—can we then be surprized that it is so defective? The recollection of these difficulties deter the advocates of the system from any future convention, not reflecting that a future convention could not destroy what is done, that if with the full sense of their constituents, they could agree on no amendments, it would still remain for the States to adopt as it now stands—but this may be a subject of future consideration.—It is certain we had better have no general government than a bad one—We may make one hereafter, but we shall never get rid of this if we adopt it—Its defects are that it almost entirely neglects *civil liberty*, that is the rights of individuals against legislative and executive encroachments—It is true it has a bill of rights, but then it is the shortest that ever was seen; although long enough for the government as originally reported—yet now it appears that they stumbled over diamonds in order to pick up stones; and it is most certain that this new system will

entirely annihilate that *federal freedom* which would have attoned in a great measure, for the loss of the forms of both political and civil liberty.—Had the States continued separate, sovereign and independant, they must have bid an eternal defiance to despotism, and they might have had leisure to have amended gradually the defects of their several institutions; as it is, the same authority operating immediately on the individuals of such vast territories, differing materially in national interests and private manners must from necessity, be either despotic or ineffectual, and that for the following among many other reasons.—The misrule and commotions of this general government (and all governments are unavoidably subject to misrule and its attendant commotions) will agitate the passions and affect the interests of the whole mass of national society by the same shock; of course the fate of the empire must be involved in the good or bad administration of the most complicated and difficult system of government, that mankind ever yet beheld; but had the States remained separate and sovereign, this misrule if their individuals or even the revolution of a single State, being altogether local, would have left the others, entirely unagitated, to interpose the voice of reason and pursue the dictates of justice, which is the great and applauded security and happiness of a confederacy of republics. The examples adduced and the opinions given by Montesquieu, extend only to *unions between States*, not *governments of individuals*—In Montesquieu's time, fœderal had entirely a different meaning from what it has now[2]—The small distinction between a confederacy operating on States collectively in their corporate capacity, and a general or national government exercising legislative, executive and judiciary powers on every citizen of the empire, so trifling to Aristides, that he marches over it without noticing, would probably have brought this great legislator for mankind, to a full stop.—Called upon so solemnly as he is, if the good old Frenchman could come back and see how his works are read and understood in our day, and what principles they are quoted to support, he would certainly take up his books and carry them off with him.—In the new American government there is nothing to prevent despotism, every feature and symptom forebode its rapid approach. In the first place it will not be denied but that a nation must be governed by its own sense of what is right, and then they are free—or they must be governed contrary to their sense, and then it must be by despotic force and they become slaves.—Where the national interests of separate parts [of] an empire differ materially—each part must mutually give up part of its interests and wishes, to constitute an impartial general law—which made by a mutual sacrifice opinion must in its nature be contrary to the sense of the whole—As the people then

loose sight of the only means of judging of what is right, that is their own feelings—power becomes transferred on their rulers, without any certain limitation remaining with their constituents, who always displeased even with the most perfect impartiality, which in this case becomes general injustice, must have their senses and their strength destroyed, or they will destroy the government.—Again a nation to be governed according to its own sense of what is right, must have some regular and certain mode of changing the effective administration of their government, or they will be involved in such constant turbulence and commotion, that the quiet slavery of despotism, will appear preferable and be submitted to—a complicated system, which hides from investigation the diseased part, and destroys responsibility (one State changing its representatives for a law which will be popular in other States, who will encourage and support theirs) will soon reduce our people to despair—complicated forms are therefore always simplified by the sword of a despot.—Again our immense territory offers a secure asylum, easily surrounded by solitary wildernesses, in which despotism may safely erect her throne of terrors; we shall not be surrounded by a number of independant States, who may control our government by the influence of a balance of power:—And lastly, what is most dangerous, our state of society demands either absolute freedom or absolute tyranny—we have among us none of those permanent orders and distinct ranks of men, which are the only security of the mixed governments we so much admire—All are entitled to be equally free, and they will be so, or by one common ruin involved themselves in an equal slavery. In such cases the gradation is an easy, constant, and natural one—Voltaire, with more truth than many are aware of, calls Turkey a great democracy—and any State as large as Turkey, without [those?] distinctions of different orders of society, will be ruled by exactly such a government as Turkey—the difference between a pure democracy and a pure despotism is not worth a distinction—Representation will not do—I have not the smallest doubt but that every reflecting merchant in the southern States, and every member that has served them in Congress, would this moment rather entrust the regulation of our commerce to a President and Council, independant of all the States, than to a Senate in which the staple States are out-voted as eight to five—Thus we can even now discover that *the authority of one man is a law fundamental in all large governments*—and that is despotism—To conclude this general government as it now stands, without the necessary checks, will either be unable to move at all, from the stout resistance and alarmed jealousy of the separate States, which may not perhaps be an undesirable event—or secondly, which would be the most dishon-

orable event, it may frighten us to take shelter again under the wing of Great-Britain—or lastly and worst of all, it may in one day by a vigorous and good administration, lay the foundation of as dreadful a tyranny as ever scourged mankind—How shall we avoid the three—the first and most obvious instruction of wisdom, would be to tread back the hasty and injudicious steps we have taken—recur to first principles, when we are sensible that we labor under any defect, the common lesson of reason is to look for the disease at home and apply a remedy there—Fools and children look abroad for assistance—Americans amend your separate constitutions!—When they are right, you will no longer hanker after these dangerous general governments—Were I assured this could be done now, my decided advice would be to divide the continental debt according to the average revenues of each State since peace—leave a committee of Congress to sell the western territory, and to call a general council when necessary—but break up Congress until the present *esprit du corps* should be thoroughly annihilated—But as I despair of proper State amendments, I would advise our conventions to digest those amendments to the proposed system, which will guard the civil rights of our citizens—agree on those checks on the general government which will prevent their legislating for individuals, but in cases where the State governments are actually deficient and refractory—this may secure our political and fœderal liberty—having done this, let them authorise their former deputies or others to meet those of the other States, revise their work and then adjourn to give them time for six or eight months; if no amendments can be got, they may if they choose adopt it as it now stands on their second meeting—at present the important States who have adopted, are most anxious for such amendments—will they not rather agree to this proposal, than risque amending after a government should be adopted, which from its great powers and the numerous offices it will have the disposal of, may certainly influence one-fourth of the States to reject any diminution of their authority?—But at all events my countrymen, no standing army—If this government is founded on truth, truth can always defend her own cause against error or design—and now that you may be free and happy is the interest, and I will add, the wish of

A FARMER.

1. This item is the sixth and last part of "A Farmer" VII, the first part of which was printed in the Baltimore *Maryland Gazette* on 4 April. Parts 2–5 appeared in the *Gazette* on 8, 11, 15, and 22 April, respectively (RCS:Md., 473–77n, 487–90, 504–7, 516–19, 525–28).

2. See Montesquieu, *Spirit of Laws*, for his discussion of federal versus consolidated government in Volume I, Book VIII, chapters 16, 17, 19, and 20, and Book IX, chapters 1–3.

Henry Knox to Marquis de Lafayette
New York, 26 April 1788 (excerpt)[1]

. . . The Convention by you Mr. Jefferson and common Sense, judge wisely respecting the New Constitution requiring some amendments & of the time they should be effected.[2]

Most certainly if the amendments were made a condition of the adoption of the Constitution, neither amendments or constitution would ever be received—A more complex and difficult task cannot be imagined than to obtain the concurrence of a majority of all the States to a constitution, militating more or less with the prejudices, habits or interests of most of the States—The unanimity of the former convention may be regarded, as a rare evidence of the empire of reason and sound policy—Let another be assembled, and perhaps no four States would agree in any one System.

But I think my hopes are well founded that we shall not be under the necessity of having recourse to the miserable alternative of another Convention—For the prospects are very flattering that more than *nine* states will accept the Constitution in the course of two or three months. . . .

1. FC, Knox Papers, GLC0243.03860, The Gilder Lehrman Collection, The Gilder Lehrman Institute of American History, at the New-York Historical Society. Knox answers Lafayette's letters of November 1787 and February 1788, neither of which has been located. See note 2 for some idea about the contents of the February letter.

2. Lafayette's letter to Knox (see note 1) was probably similar to one that he had written to George Washington on 4 February. In that letter, Lafayette said that his views on amendments coincided with those of Thomas Jefferson (BoR, II, 302). For more on Lafayette's opinion on amendments, see his letter to George Washington, 1 January 1788 (BoR, II, 226). For more on Jefferson's views on amendments at this time, see his letters to William Stephens Smith, 2 February (BoR, II, 301–2); and to James Madison, 6 February, and to Alexander Donald, 7 February (Boyd, XII, 569–70; and BoR, II, 308). For earlier Jefferson letters, see CC:Vol. 2, pp. 480–81; BoR, II, 207–8.

Maryland Convention Considers Amendments to Constitution
26 April 1788

For the amendments considered by the Maryland Convention, see BoR, I, 245–47.

Richard Henry Lee to Samuel Adams
Chantilly, Westmoreland County, Va., 28 April 1788[1]

Your favour of December 3d, in the last year,[2] reached me the last of January following, and it should have been answered with my thanks long since, if the uncommon badness of the winter, stopping all com-

munication, had not prevented. Your sentiments on the new political structure, are, in my mind, strong and just. Both reason and experience prove, that so extensive a territory as that of the United States, including such a variety of climates, productions, interests; and so great difference of manners, habits, and customs; cannot be governed in freedom—until formed into states, sovereign, *sub modo*, and confederated for the common good. In the latter case, opinion founded on the knowledge of those who govern, procures obedience without force. But remove the opinion, which must fall with a knowledge of characters in so widely extended a country, and force then becomes necessary to secure the purposes of civil government; hence the military array at Kamtschatka, at Petersburg, and through every part of the widely extended Russian empire.[3] Thus force, the parent and the support of tyranny, is demanded for good purposes, although for ever abused to bad ones—that a consolidated, and not a federal government, was the design of *some*, who formed this new project, I have no doubt about. The dazzling ideas of glory, wealth, and power uncontrolled, unfettered by popular opinions, are powerful to captivate the ambitious and the avaricious. With such people, obedience resulting from fear, the offspring of force, is preferable to obedience flowing from esteem and confidence, the legitimate offspring of the knowledge that men have of wisdom and virtue in their governors; and, above all, from the conviction that abuses may be rectified by the substantial checks that political freedom furnish. Massachusetts, I see, has adopted the plan; but proposes to insist perseveringly on amendments.[4] If it were permitted an individual to question so enlightened an assembly, I would ask, why submit to a system requiring such amendments, and trust to creatures of our own creation, for the correcting of evils in it that threaten the destruction of those ends for which the system was formed? The fear of greater evils has been stated: but I cannot help considering such fears as being generated by design upon weakness. The objections to the present system, if accurately considered, will, I believe, be found to grow out of those temporary pressures, created by a long and expensive war, which time and prudence may remove. But, though it were admitted that some amendments to the present confederation would better promote the ends designed by it, why, for that reason, exterminate the present plan, and establish on its ruins another, so replete with power, danger, and hydra-headed mischief? The Massachusetts amendments are good, so far as they go. The first, third, and fourth amendments are well contrived to keep in existence the state sovereignties; and the first particularly proper for securing liberty from the abuse of construction, which the new plan most amply admits of. But why, my

dear friend, was the provision in your seventh proposition of amendment, confined to causes between citizens of different states, since the reason applies to suitors of every country, and foreigners will be more apt than our own citizens to abuse, in the way, which, that part of the proffered plan permits, and which this amendment of Massachusetts is designed to prevent? England and Scotland are united for every good purpose of defence and offence, yet a foreigner cannot sue a resident Scotsman in England for debt contracted in Scotland: nor will any foreign nation upon earth grant a similar privilege to our citizens over theirs, of calling their people from their own countries to answer demands against them—the fixt idea of all the European nations being, that strangers are not to have privileges in their own country superior to what their own subjects enjoy.

1. Printed: Richard H. Lee, *Memoir of the Life of Richard Henry Lee, and His Correspondence . . .* (2 vols., Philadelphia, 1825), II, 86–87. "Chantilly" was Lee's Westmoreland County plantation.

2. BoR, II, 180–81.

3. The Kamchatka Peninsula is bordered by the Bering Sea; St. Petersburg is on the Baltic Sea opposite Finland. Thus, Lee is referring to Russia, from one end to the other.

4. For the amendments proposed by the Massachusetts Convention on 6 February, see BoR, I, 243–45n.

George Washington to Marquis de Lafayette
Mount Vernon, Fairfax County, Va., 28 April 1788 (excerpt)[1]

. . . On the General Merits of this proposed Constitution, I wrote to you, some time ago, my sentiments pretty freely.[2] That letter had not been received by you, when you addressed to me the last of yours which has come to my hands. I had never supposed that perfection could be the result of accomodation and mutual concession. The opinion of Mr. Jefferson & yourself is certainly a wise one, that the Constitution ought by all means to be accepted by nine States before any attempt should be made to procure amendments.[3] For, if that acceptance shall not previously take place, men's minds will be so much agitated and soured, that the danger will be greater than ever of our becoming a disunited People. Whereas, on the other hand, with prudence in temper and a spirit of moderation, every essential alteration, may in the process of time, be expected.

You will doubtless, have seen, that it was owing to this conciliatory and patriotic principle that the Convention of Massachusetts adopted the Constitution in toto;—but recommended a number of specific alterations and quieting explanations, as an early, serious and unremit-

ting subject of attention. Now, although it is not to [be] expected that every individual, in Society, will or can ever be brought to agree upon what is, exactly, the best form of government; yet, there are many things in the Constitution which only need to be explained, in order to prove equally satisfactory to all parties. For example: there was not a member of the convention, I believe, who had the least objection to what is contended for by the Advocates for a *Bill of Rights* and *Tryal by Jury*. The first, where the people evidently retained every thing which they did not in express terms give up, was considered nugatory as you will find to have been more fully explained by Mr. Wilson[4] and others:— And as to the second, it was only the difficulty of establishing a mode which should not interfere with the fixed modes of any of the States, that induced the Convention to leave it, as a matter of future adjustment. . . .

1. FC, Washington Papers, DLC. For longer excerpts from this letter, see CC:715. For the entire letter, see Abbot, *Washington, Confederation Series*, VI, 242–46.

2. See Washington to Lafayette, 7 February 1788 (BoR, II, 308–9).

3. For Lafayette's opinion, see his letter to Washington of 4 February 1788 (BoR, II, 302); and for Jefferson's, see four letters that he wrote between 20 December 1787 and 7 February 1788 (BoR, II, 207–8, 225–26n, 301–2, 308).

4. See James Wilson's speech of 6 October 1787 (BoR, II, 25–28).

Fabius VIII

Pennsylvania Mercury, 29 April 1788 (excerpt)[1]

. . . As to alterations, a little experience will cast more light upon the subject, than a multitude of debates. Whatever qualities are possessed by those who object, they will have the candor to confess, that they will be encountered by opponents, not in any respect inferior, and yet differing from them in judgment, upon every point they have mentioned.

Such untired industry to serve their country, did the delegates to the federal convention exert, that they not only laboured to form the best plan they could, but, provided for making at any time amendments on the authority of the people, without shaking the stability of the government. For this end, the Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to the constitution, or, on the application of the legislatures of two thirds of the several states, SHALL call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by Congress.

Thus, by a gradual progress, as has been done in *England*, we may from time to time introduce every improvement in our constitution,

that shall be suitable to our situation. For this purpose, it may perhaps be adviseable, for every state, as it sees occasion, to form with the utmost deliberation, drafts of alterations respectively required by them, and to enjoin their representatives, to employ every proper method to obtain a ratification.

In this way of proceeding the undoubted sense of every state, collected in the coolest manner, not the sense of individuals, will be laid before the whole union in Congress, and that body will be enabled with the clearest light that can be afforded by every part of it, and with the least occasion of irritation, to compare and weigh the sentiments of all United *America;* forthwith to adopt such alterations as are recommended by general unanimity; by degrees to devise modes of conciliation upon contradictory propositions; and to give the revered advice of our common country, upon those, if any such there should be, that in her judgment are inadmissible, because they are incompatible with the happiness of these states.

It cannot be with reason apprehended, that Congress will refuse to act upon any articles calculated to promote the *common welfare*, tho' they may be unwilling to act upon such as are designed to advance PARTIAL *interests:* but, whatever their sentiments may be, they MUST call a Convention for proposing amendments, on applications of two-thirds of the legislatures of the several states.

May those good citizens, who have sometimes turned their thoughts towards a second Convention, be pleased to consider, that there are men who speak as they do, yet do not mean as they do. These borrow the sanction of their respected names, to conceal desperate designs. May they also consider, whether persisting in the suggested plan, in preference to the constitutional provision, may not kindle flames of jealousy and discord, which all their abilities and virtues can never extinguish.

1. Reprinted: *New Hampshire Spy*, 17 June; Baltimore *Maryland Gazette*, 20 June; Rhode Island *Providence Gazette*, 26 July; Philadelphia *American Museum*, December issue. For the entire essay, see CC:717.

Philodemos

Pennsylvania Gazette, 30 April 1788 (excerpt)[1]

To the PEOPLE of the UNITED STATES.

. . . The question before you at this time does not involve the permanent acceptance and adoption of the fœderal constitution for ever, or without amendments. You are called seriously to consider the condition of your affairs at home, and the state of your connexions abroad—

to reflect what must be the consequences of your continuing longer in the predicament described—and then to determine, whether it is not better to cure a great number of these certain and ruinous evils by the adoption of the government proposed, accompanied as it is with opportunities and provisions for amendment. In resolving this momentous question, I do not wish you to be too far influenced by the distracted state of our affairs. If the liberty and safety obtained by the late revolution will be lost or endangered, take care how you proceed. But let us view the government with candor, and let us consider it, as it is, bottomed on the state constitutions. It may not be perfect—it certainly is not perfect. But I ask its candid and sincere opposers, where is the constitution, or when has existed the country more fortunate in its frame of government, than America would be under the combined operations of the state and foederal constitutions? I admit again, that the constitution is not perfect; but shall we hesitate to accept a constitution better than any heretofore enjoyed by any nation, when the alternative is lawful tenders, insurrection and anarchy at home, and neglect and contempt abroad? Surely no. Let us then make the trial of the proposed government, understanding on both sides, that every wholesome alteration and amendment may hereafter be adopted, which shall be necessary to preserve the peace, liberty and safety of the people, and to establish the dignity and importance of the United States. . . .

1. Reprinted: Boston *American Herald*, 12 May. For the entire essay, see RCS:Pa. Supplement, 1268–71.

Philadelphia Independent Gazetteer, 30 April 1788[1]

Extract of a letter from Franklin county, 24th April, 1788.

"The necessary arrangements," as they are termed here, have taken place in these counties; committees of observation and correspondence are appointed in every township, who correspond with the militia officers and leading men in every county in the state; the counties of Cumberland, Dauphine, and Franklin, appear to take the lead, and have been long since repairing and cleaning their arms, and every young fellow who is able to do it, is providing himself with a *rifle* or musket, and amunition: They have also nominated a commanding officer, it is said to be General ———, and say that they can turn out, at ten days warning, TWENTY THOUSAND expert woodsmen, completely armed; this is I believe very true, as all the counties, this side the Susquehanna, are nearly unanimous, and near three fourths of the

other counties. They say the strength of their opponents are in the city, and give out that it will be in vain for them to make any resistance; they mean to make * * *[2] and are promised assistance from a neighbouring state, who, I find, are as warmly opposed as this state to the system. The *lawyers*, &c. when they precipitated with such fraud and deception the new system upon us, it seems to me, did not recollect, that the militia had arms; however, it will be an awful lesson to tyrants, if they should feel the resentment of an enraged people; I can assure Mr. Wilson, that the people are now as *determined* to secure their liberties as he is *anxious* for power and offices;[3] and let the worst come to the worst, the opposition have the constitution of the state, the established law of the land, on their side; this yet remains good and firm, any doings, *or acts of a faction, or illegal mob convention*,[4] *to the contrary notwithstanding. A civil war* is dreadful, but a little blood spilt now, will perhaps prevent much more hereafter. However, another general convention being called, will prevent any thing like it happening; the people appear anxious for farther powers being granted to Congress; and are generally agreed, that those offered by the minority of the convention of this state[5] would be quite sufficient, and all their rights and privileges would be then secured by the proposed bill of rights, consequently unity and harmony would follow: on the other hand, if the votaries of power and offices do not agree to peaceable measures, by having another general convention called, I dread the consequences to themselves.

"N.B. I hear no more of the attempt to execute the order of Council to disarm the militia,[6] I believe the *sub-lieutenants* in most of the counties refused to deliver up the arms, it was well enough, for the people were determined not to part with them. It is hinted that since the western members went down, they cancelled the order."

1. Reprinted: *New York Journal*, 6 May; *New York Morning Post*, 6 May; Rhode Island *Providence Gazette*, 17 May; *Norwich Packet*, 22 May; *New Hampshire Recorder*, 3 June. This newspaper item reflects the continuing turmoil over the Constitution in western Pennsylvania. In March 1788 Antifederalists in at least eight counties submitted petitions to the state legislature signed by more than 6,000 people requesting that the state's ratification of the Constitution "not be confirmed" (RCS:Pa., 709–25). Moreover, Cumberland County had only recently become pacified in the aftermath of the Carlisle riot of 26 December 1787. (See headnote to CC:713.)

2. At this point the *Independent Gazetteer* printed two lines of asterisks, indicating that material perhaps too sensitive to print was omitted. The reprints contain as many as two lines of asterisks to as few as three asterisks.

3. It was thought that Wilson sought to be appointed U.S. Attorney General or Chief Justice. See also "James de Caledonia" IV, Philadelphia *Freeman's Journal*, 12 March (RCS:Pa. Supplement, 1021).

4. Probably a reference to the call of the state Convention by a mob-assisted legislature on 28–29 September 1787 (CC:125; and RCS:Pa., 54–126).

5. See the "Dissent of the Minority of the Pennsylvania Convention," *Pennsylvania Packet*, 18 December 1787 (BoR, II, 197–203n).

6. On 4 December 1787 the Supreme Executive Council resolved "That the Lieutenants of the city and several counties within this state, be directed to collect all the public arms within their respective counties, have them repaired, and make return to Council, with the accounts and vouchers necessary for payment." Some Antifederalists charged that this was part of a Federalist plot to force the Constitution upon the people. The Council denied the charge, and it published some of its earlier resolves concerning the militia to demonstrate that it was actually arming the militia in order to protect the people, especially on the frontier. As a further demonstration of its goodwill, the Council resolved on 12 January 1788 "That the Lieutenants of the city and counties throughout the state, be directed, as soon as the public arms are repaired, to deliver them to the battalions under their command, apportioning them to the number of men in each, take receipts for them, and make report to Council." (For this issue, see "The Militia and the Supreme Executive Council, 19 December 1787–5 February 1788," RCS:Pa. Supplement, 736–42.)

The Society of Western Gentlemen Revise the Constitution Virginia Independent Chronicle, 30 April, 7 May 1788 (extra) (excerpts)

On 8 March Antifederalist Arthur Campbell of Washington County notified Francis Bailey, the Antifederalist editor of the Philadelphia *Freeman's Journal*, that he was having forwarded to him (via Adam Orth of Lancaster County, Pa.) "a revised Copy" of the Constitution. Campbell said that this revision was "the work of a Society of Western Gentlemen, who took this method to investigate and understand the piece & to some of them it has lately been hinted, that the most of the pieces wrote for and against the Constitution, were rather declamatory, and bewildered common readers in the perusal; but by our mode it may be shewn at one view, what is deamed right or what is wrong."

Speaking for the Society, Campbell asked Bailey to edit the revised Constitution and to insert it on the first page of his newspaper, "embellished with proper Capitals and a neat type." He thought that it would have to be printed in two installments. The Society also wanted Bailey to ask the editor of the widely circulated Philadelphia *American Museum* to publish the revised Constitution (RCS:Va., 472–73).

On 9 March, Campbell wrote Adam Orth and sent him a copy of the revised Constitution, which included a declaration of rights. Campbell had changed his mind about newspaper publication; he now believed that the revision should be printed as a pamphlet that would be circulated "especially in Pensylvania, N. York and Virginia." He hoped that either two or three printers, or Pennsylvania's Antifederalists, might assume the cost of publication. Campbell thought that 500 copies forwarded "to a trusty correspondent in Petersburg Virginia would sell fast." He asked Orth to discuss the matter with such prominent Western Pennsylvania Antifederalists as William Findley, Robert Whitehill,

John Smilie, and James McLene. Campbell also hoped that Dr. John Ewing of Philadelphia, a Presbyterian minister and Provost of the University of Pennsylvania, might revise the Society's work. He also believed that the proposed Declaration of Rights would please most people (RCS:Va., 473–74). Orth apparently informed Philadelphia's Antifederalist leaders because the letter that he received from Campbell is in the papers of George Bryan, the city's principal Antifederalist. (The Society of Western Gentlemen's Declaration of Rights appears to have been taken largely from the Virginia Declaration of Rights of 1776 [BoR, I, 111–13].)

Neither the Society's revised Constitution nor its Declaration of Rights was published in the Philadelphia *Freeman's Journal*. Instead, they were printed in two installments in the *Virginia Independent Chronicle* on 30 April and 7 May (extraordinary). (The Declaration of Rights and the revision of Article I appeared on 30 April, Articles II–VII on 7 May.) Arthur Campbell turned to the *Virginia Independent Chronicle* again on 18 June, when it published his Antifederalist article signed "Many" (RCS:Va., 1638–40).

The conflated text printed below was constructed by comparing the revised Constitution with the engrossed Constitution (BoR, I, 607–17). Only those parts of the Constitution in which the Society made significant changes are printed. The text is set as follows: (1) retained parts of the engrossed Constitution are set in roman type; (2) deletions from the engrossed Constitution are set in lined-out type; and (3) additions are set in italic type. The complete text of the revised Constitution is in RCS:Va. Supplement, 65.

For the entire piece, see RCS:Va., 769–79.

The FEDERAL CONSTITUTION amended: or, an ESSAY to make it more conformable to the sense of a majority of the Citizens of the United States.

A DECLARATION of RIGHTS, or
Fundamentals of Republican Government.[1]

Whereas the happiness of mankind, essentially depends upon the principles of government, which have been adopted, or may gradually be received by the societies in which they live; and whereas the fundamental rules of a civil society, have the same tendency to encrease the virtuous dispositions of good Governors, and restrain the vices of bad ones, as any other principles of morality have to form the manners and characters of individuals:—Therefore we the people of the United States, by our representatives in full and free convention assembled have maturely resolved on the following DECLARATION of RIGHTS, as the basis of our government.

1. That all men are by nature free and independent, and have certain inherent and unalienable rights, namely the enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

2. That the duty of worshipping Almighty God, of enquiring after, and possessing the truth, according to the dictates of conscience, is equally incumbent on all mankind: That for the more general diffusion of benevolence, hospitality, and undissembled honesty, among all ranks of people, the free exercise and enjoyment of religious profession, and worship without *preference*, shall forever hereafter be allowed within the United States.

3. That the nature and divine end of all power, is to promote the happiness of mankind; that all civil power is vested in, and derived from the people; all magistrates, and rulers, and their trustees and deputies, and are at all times accountable to them.

4. That the best form of government, is that which will produce the greatest common good, with the least danger, trouble, and expence, to individuals, and will most effectually guard against mal-administration; and when any government is found inadequate to these purposes, the people have a right to alter or abolish the same.

5. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; wherefore no title or place of honor, or profit, should be hereditary.

6. That the freedom of the people essentially depends on their making their own laws. Therefore all elections ought to be frequent and free, and all men having sufficient evidence of permanent common interest with an attachment to the community, have the right of suffrage: inequality, and all kinds of restraint, bribery and corruption in elections, is destructive of freedom, and ought to be guarded against.

7. That every individual in society has a right to be protected by it, in the enjoyment of life, liberty, property, and reputation, and ought to find a certain remedy against all injuries, or wrongs, obtaining his right freely, without purchase, completely without denial, and promptly without delay, according to law.

8. That in all capital, or criminal prosecutions, every person has a right to be heard by himself, or his council, to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and a speedy public trial by an impartial jury of the vicinage, without whose consent, he cannot be found guilty: nor can he be compelled to give evidence against himself, nor can any man be deprived of his liberty, but by the laws of the land or judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor punishments inflicted exceeding the nature of the crime;

for if punishments were proportioned to crimes, humanity, instead of pleading for the criminal, would call for their execution.

10. Every person has a right to hold himself, his house, papers, and possessions free from search or seizure, therefore general warrants to seize any person or his property, without evidence of an act committed, and a particular description of his offence, are grievous and oppressive and ought not to be granted.

11. That the people have a right to the freedom of speech, of writing, and publishing their sentiments; therefore printing presses shall not be subject to restraint, other than liableness to legal prosecution, for false facts printed and published.

12. Laws made to punish for actions which have not been declared crimes, by preceding laws, are inconsistent with the fundamental principles of a free government.

13. The people have a right to keep and bear arms, for the national defence; standing armies in time of peace are dangerous to liberty, therefore the military shall be subordinate to the civil power.

14. The community have a right to require of every individual his personal services when necessary for the common defence, and to demand a just and equal portion of his property for public uses in consideration of the protection which he enjoys.

15. In order to preserve the blessings of liberty, frequent and stated recurrence must be had to fundamental principles, and a firm adherence must be maintained, to justice, moderation, temperance, frugality, industry, and virtue.

[The Revised Constitution (excerpts)]

Article I. . . .

Section 8. The Congress shall have Power. . . .

To pass laws, to encourage, and secure, the use and freedom of the press.[2] . . .

Article III.

Section 1. . . .

The Trial of all ~~Crimes~~ *causes*, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State, where the ~~said Crimes shall~~ *cause of action arose, or where the crime may* have been committed; but when ~~not~~ committed ~~within~~ *without* any *of the* State*s*, the Trial shall be at such Place or Places as the Congress may by Law have directed. . . .

Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of ~~two thirds~~ *a majority* of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of ~~three fourths~~ *two-thirds* of the several States, or by Conventions in ~~three fourths~~ *two-thirds* thereof, as the one or the other Mode of Ratification may be proposed by the Congress. . . .

Article VI. . . .

The declaration of rights, be made part of this constitution, and considered as fundamental laws, not to be violated, on any pretence whatever. . . .

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers; both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no *other* religious Test shall ever be required, ~~as a Qualification to any Office or public Trust under the United States~~ *than a belief in the one only true God, who is the rewarder of the good, and the punishment of the evil.*

1. The proposed Declaration of Rights replaced the U.S. Constitution's Preamble.

2. This clause was inserted between clauses 8 and 9, which deal, respectively, with copyrights and inferior courts. On 9 March 1788 Arthur Campbell wrote that "the clause in the [revised] Constitution in favour of the Press, may be of more value to them [i.e., printers] than ten thousand copys" (to Adam Orth, RCS:Va., 474).

Address to the Members of the New York and Virginia Conventions post-30 April 1788 (excerpt)

This address was drafted after the Maryland Convention ratified the Constitution and after the Maryland Convention rejected the proposal of recommendatory amendments on 26 and 29 April, respectively. The draft refers to "the late conduct" of the Federalists in the state Convention which was designed to create the impression that there was little or no support in Maryland for amendments. Directed at the members of the New York and Virginia conventions which were scheduled to meet in June, the address attempted to demonstrate that there was considerable support in Maryland for amendments safeguarding "THE NATURAL & UNALIENABLE RIGHTS OF MEN." (For more on amendments in the Maryland Convention, see BoR, I, 245–47.) The manuscript of this address, which is in two parts, is located in the Etting Collection (Old Congress) at the Historical Society of Pennsylvania. The address has not been located in any newspaper.

The authorship of the address is not clear. At a later date someone wrote "James Mercer?" on the manuscript of the first part of the essay. The second part bears two later-day attributions: "John Fenton Mercer" and "Mercer, Jno Francis"; the former appears at the top of the first page, the latter at the bottom of the last page.

Herbert J. Storing, who believes that John Francis Mercer was the author of the address, writes that some of the arguments used in the address are similar to those employed by Mercer in a 14 August 1787 speech in the Constitutional Convention; by "A Farmer," who published seven lengthy essays in the Baltimore *Maryland Gazette* between 15 February and 25 April; and by Mercer in an 1804 letter to Thomas Jefferson. Storing also thinks that Mercer was probably the author of "A Farmer" (*The Complete Anti-Federalist* [7 vols., Chicago, 1981], V, 5–73, 101–6). Although similarities can be found in Mercer's Constitutional Convention speech and the essays by "A Farmer," the speech seems to be unconnected—and at times even contradictory—to the address.

For the entire address, see CC:721.

. . . For these & many other reasons we are for preserving the Rights of the State Governments, where they must not be necessarily relinquished for the welfare of the Union—& where so relinquished the line shoud be definitely drawn if under the proposed Constitution the States exercise any Power, it woud seem to be at the mercy of the General Government—for it is remarkable that the clause securing to them those rights not expressly relinquished in the old Confœderation, is left out in the new Constitution;[1] And we conceive that there is no Power which Congress may *think* necessary to exercise for the *general Welfare*, which they may not assume under this Constitution—& this *Constitution* & the Laws made under it are declared paramount even to the unalienable rights, which have heretofore been secured to the Citizens of these States by their Constitutional compacts.—

Altho' this new Constitution can boast indeed of a Bill of Rights of seven Articles—yet of what nature is that Bill of Rights? to hold out such a security to the rights of property as might lead very wealthy & influential Men & Families into a blind compliance & adoption—whilst the Rights that are essential to the great body of Yeomanry of America are entirely disregarded.—

Moreover those very powers, which are to be expressly vested in the new Congress, are of a nature most liable to abuse—They are those which tempt the avarice & ambition of Men to a violation of the rights of their fellow Citizens, & they will be screen'd under the sanction of an undefined & unlimited authority—Against the *abuse* & *improper* exercise of these special powers, the People have a right to be secured by a sacred Declaration, defining the rights of the Individual & limiting

by them, the extent of the exercise—The People were secured against the abuse of those Powers by fundamental Laws & a Bill of Rights, under the Government of Britain & under their own Constitutions—That Government which permits the abuse of Power, recommends it; & will deservedly experience the tyrrany which it authorizes; for the history of Mankind establishes the truth of this political adage—*that in Government what may be done will be done*

The most blind admirer of this Constitution must in his heart confess that it is as far inferior to the British Constitution, of which it is an imperfect imitation as darkness is to light—In the British Constitution, the rights of men, the primary objects of the social Compact—are fixed on an immoveable foundation & clearly defined & ascertained by their Magna Charta, their Petition of Rights & Bill of Rights & their Effective administration by Ostensible Ministers, secures Responsability—In this new Constitution—a complicated System sets responsability at defiance & the Rights of Men neglected & undefined are left at the mercy of events; we vainly plume ourselves on the safeguard alone of Representation, forgetting that it will be a Representation on principles inconsistent with true & just Representation—that it is but a delusive shadow of Representation proffering in theory what can never be fairly reduced to practice—And after all Government by Representation (unless confirm'd in its views & conduct by the constant inspection, immediate superintendance, & frequent interference & control of the People themselves on one side, or an hœreditary nobility on the other, both of which orders have fixed & permanent views) is [really?] only a scene of perpetual rapine & confusion—& even with the best checks it has failed in all the Governments of Europe, of which it was once the basis, except that of England.—

When We turn our Eyes back to the scenes of blood & desolation which we have waded through to seperate from Great Britain—we behold with manly indignation that our blood & treasure have been wasted to establish a Government in which the Interest of *the few* is preferrd to the Rights *of the many*—When we see a Government so every way inferior to that we were born under, proposed as the reward of our sufferings in an eight years calamitous war—our astonishment is only equall'd by our resentment—On the conduct of Virginia & New York, two important States the preservation of Liberty in a great measure depends—the chief security of a Confœderacy of Republics was boldly disregarded & the old Confœderation violated by requiring Nine ~~States~~ instead of 13. voices to alter the Constitution.—but still the resistance of either of these States in the present temper of America (for

the late conduct of the Party here must open the eyes of the People in Massachusetts with respect to the fate of their amendments)[2] will secure all that We mean to contend for—THE NATURAL & UNALIENABLE RIGHTS OF MEN in a Constitutional manner—At the distant appearance of danger to these, We took up Arms in the late Revolution—& may we never have cause to look back with regret on that period when connected with the Empire of Great Britain, We were *happy, secure* & *free.*—

1. Article II of the Articles of Confederation states: "Each state retains its sovereignty, freedom and independence, and every Power, Jurisdicition and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

2. As of 30 April, the Massachusetts Convention had been the only convention to recommend amendments (BoR, I, 243–45n). For the Federalist efforts to obstruct the Maryland Convention from recommending amendments, see RCS:Md., 659–84.

Thomas Jefferson to George Washington
Paris, 2 May 1788 (excerpts)[1]

. . . I had intended to have written a word to your Excellency on the subject of the new constitution, but I have already spun out my letter to an immoderate length. I will just observe therefore that according to my ideas there is a great deal of good in it. There are two things however which I dislike strongly. 1. The want of a declaration of rights. I am in hopes the opposition of Virginia will remedy this, and produce such a declaration. 2. The perpetual re-eligibility of the President. . . . Under this hope I look forward to the general adoption of the new constitution with anxiety, as necessary, for us under our present circumstances. . . .

1. RC, Washington Papers, DLC. Printed: Abbot, *Washington, Confederation Series*, VI, 251–57n.

Federal Farmer: An Additional Number of Letters to the Republican
New York, 2 May 1788 (excerpts)

On 2 May nearly identical advertisements in the *New York Journal* and the *New York Packet* announced as "Just Published" a pamphlet entitled *An Additional Number of Letters from the Federal Farmer to the Republican; Leading to a Fair Examination of the System of Government, Proposed by the Late Convention; and to Several Essential and Necessary Alterations in It; and Calculated to Illustrate and Support the Principles and Positions Laid Down in the Preceding Letters* (Evans 21197). This Antifederalist pamphlet could be purchased from Thomas Greenleaf of the *Journal* and Samuel and John Loudon of the *Packet* and from New York

City booksellers Robert Hodge, Thomas Allen, Samuel Campbell, and John Reid.

The advertisement, which appeared in the daily *New York Journal* until 26 July and in the semiweekly *New York Packet* until 13 June, added that "The former letters, published under the signature of the Federal Farmer [BoR, II, 96–105], have undergone several impressions in the different states, and several thousands of them have been sold. They are admitted, by candid men of both parties, to be written with a spirit of moderation and candour.

"A number of principles are laid down in them, highly interesting to the people of America, which ought to be more fully illustrated, than the bounds which the author set to himself, in the former letters, would permit.

"The design of these additional letters, is, more fully to explain and enforce the positions laid down in the former. The author does not aim to foment the passions; his appeal is to the reason of his readers. He wishes every man to examine for himself, and form his own opinion on the merits of the question.

"There are very few dispassionate men, who do not wish to see amendments made to this system. The great drift of these additional letters, is, to point out what these amendments ought to be, and to adduce arguments to support them.

"It is a matter of small importance, whether these amendments precede or succeed the adoption of the constitution, so that they be made.

"It is hoped, therefore, that gentlemen who are sincere in declaring that they wish for amendments, will unite in turning their attention to the subject, that they may be prepared to accede to such as are proper.—To those who are thus disposed, this publication is recommended."

The title page indicates only that the pamphlet was printed in the year 1788. Neither the place of publication nor the name of the printer appears. The first two pages of the *Additional Letters* (43 and 44 in roman numerals) consist of an "Advertisement," dated "United States, *Jan.* 30, 1788," which reads: "Four editions, (and several thousands) of the pamphlets entitled the FEDERAL FARMER, being in a few months printed and sold in the several states; and as they appear to be much esteemed by one party, on the great question, and, by the other, generally allowed to possess merit; and as they contain positions highly interesting, which ought to be fully illustrated, an additional number of letters have been written.

"The subject before the public is interesting, and ought to receive a candid and full investigation. These letters are not calculated to foment the passions; they appeal to reason; they are written in a plain stile, with all the perspicuity and brevity that can be expected in writing on a subject so new, so intricate and extensive; and they have this peculiar excellency, that they lead people to examine and think for themselves, in an affair of the last importance to them.

"As to any attempts to injure the members of the convention, or any other characters whatever, the writer has no disposition to do it. Whoever will examine his letters, will perceive he is well acquainted with the members of the convention, the characters, parties, and politics of the country; and, on the whole, says, the convention was as respectable a body of men as America, probably, ever will see assembled: at the same time they will perceive, that he saw unwarrantable attempts, among designing ardent men without doors, to

impose upon a free people, by a parade of names, that in the hurry of affairs defects in the system might escape their observation. Whoever reflects coolly upon the conduct of many individuals, when the constitution first appeared, will perceive, that it was the duty of men, who saw the pernicious tendency of such conduct, in a decent manner, to disapprove it, and to endeavour to induce the people to decide upon the all-important subject before them, by its own intrinsic merits and faults.''

Letters I–V in the ''Federal Farmer'' are dated between 8 and 13 October 1787 (BoR, II, 96–105) and end on page 40. Letters VI–XVIII of the *Additional Letters*, dated between 25 December 1787 and 25 January 1788, begin on page 45 and end on page 181. The author of ''Federal Farmer'' has not been identified. For speculation about his identity, see BoR, II, 97–98. For the entire pamphlet, see CC:723.

The New York Federal Republican Committee, a group of Antifederalists in and around New York City, distributed the *Additional Letters* widely, although there is no evidence that the committee distributed the pamphlets in New York as it had other Antifederalist pamphlets in April. In mid-May, John Lamb, the committee's chairman, sent a circular letter to prominent Antifederalists in New Hampshire, Pennsylvania, Maryland, Virginia, North and South Carolina, and possibly Rhode Island calling for cooperation in obtaining amendments before nine states ratified the Constitution. (For the letter, see CC: 750-A. For more on the effort at interstate cooperation, see the headnote to George Mason to John Lamb, 9 June 1788, BoR, III.) In addition to explaining the importance of cooperation among Antifederalists, Lamb told his correspondents that he was transmitting ''a series of Letters from the Federal Farmer to the Republican.'' It is possible that Lamb meant both the *Letters* and the *Additional Letters*. (For the angry reactions of some Federalists in these states to the distribution of the pamphlets, see CC:Vol. 5, p. 267.)

The ideas expressed by ''Federal Farmer'' produced little Federalist response. Writing from New York, Virginia congressman Edward Carrington informed Thomas Jefferson that the two ''Federal Farmer'' pamphlets ''are reputed the best of any thing that has been written in the opposition'' (9 June, RCS:Va., 1591). A reviewer in the May issue of the New York *American Magazine*, probably Noah Webster, complimented ''Federal Farmer'' for his ''many judicious remarks on the proposed federal government'' even though ''the arguments want method, and the reader is consequently fatigued with numberless repetitions.'' The reviewer agreed with ''Federal Farmer'' that the general government might abuse its powers, thereby endangering the liberties of the people, but he believed that it was impossible to frame ''a system of government which shall not be liable to the same objection.'' ''The only question then,'' the reviewer continued, ''is, whether the new constitution is as good as it may or can be. The political wisdom of neither party can solve this question—the decision of it *must* be left to *experiment*'' (RCS:N.Y. Supplement, 288–89).

LETTER VI.

DECEMBER 25, 1787.

. . . Of rights, some are natural and unalienable, of which even the people cannot deprive individuals: Some are constitutional or funda-

mental; these cannot be altered or abolished by the ordinary laws; but the people, by express acts, may alter or abolish them—These, such as the trial by jury, the benefits of the writ of habeas corpus, &c. individuals claim under the solemn compacts of the people, as constitutions, or at least under laws so strengthened by long usuage as not to be repealable by the ordinary legislature—and some are common or mere legal rights, that is, such as individuals claim under laws which the ordinary legislature may alter or abolish at pleasure. . . .

The following, I think, will be allowed to be unalienable or fundamental rights in the United States:—

No man, demeaning himself peaceably, shall be molested on account of his religion or mode of worship—The people have a right to hold and enjoy their property according to known standing laws, and which cannot be taken from them without their consent, or the consent of their representatives; and whenever taken in the pressing urgencies of government, they are to receive a reasonable compensation for it—Individual security consists in having free recourse to the laws—The people are subject to no laws or taxes not assented to by their representatives constitutionally assembled—They are at all times intitled to the benefits of the writ of habeas corpus, the trial by jury in criminal and civil causes—They have a right, when charged, to a speedy trial in the vicinage; to be heard by themselves or counsel, not to be compelled to furnish evidence against themselves, to have witnesses face to face, and to confront their adversaries before the judge—No man is held to answer a crime charged upon him till it be substantially described to him; and he is subject to no unreasonable searches or seizures of his person, papers or effects—The people have a right to assemble in an orderly manner, and petition the government for a redress of wrongs—The freedom of the press ought not to be restrained—No emoluments, except for actual service—No hereditary honors, or orders of nobility, ought to be allowed—The military ought to be subordinate to the civil authority, and no soldier be quartered on the citizens without their consent—The militia ought always to be armed and disciplined, and the usual defence of the country—The supreme power is in the people, and power delegated ought to return to them at stated periods, and frequently—The legislative, executive, and judicial powers, ought always to be kept distinct—others perhaps might be added. . . .

LETTER VIII.

JANUARY 3, 1788.

DEAR SIR, Before I proceed to examine the objections, I beg leave to add a valuable idea respecting representation, to be collected from De Lome,[1] and other able writers, which essentially tends to confirm

my positions: They very justly impute the establishment of general and equal liberty in England to a balance of interests and powers among the different orders of men; aided by a series of fortunate events, that never before, and possibly never again will happen.

Before the Norman conquest the people of England enjoyed much of this liberty. The first of the Norman kings, aided by foreign mercenaries and foreign attendants, obnoxious to the English, immediately laid arbitrary taxes, and established arbitrary courts, and severely oppress[ed] all orders of people: The barons and people, who recollected their former liberties, were induced, by those oppressions, to unite their efforts in their common defence: Here it became necessary for the great men, instead of deceiving and depressing the people, to enlighten and court them; the royal power was too strongly fixed to be annihilated, and rational means were, therefore directed to limiting it within proper bounds. In this long and arduous task, in this new species of contests, the barons and people succeeded, because they had been freemen, and knew the value of the object they were contending for; because they were the people of a small island—one people who found it practicable to meet and deliberate in one assembly, and act under one system of resolves, and who were not obliged to meet in different provincial assemblies, as is the case in large countries, as was the case in France, Spain, &c. where their determinations were inconsistent with each other, and where the king could play off one assembly against another.

It was in this united situation the people of England were for several centuries, enabled to combine their exertions, and by compacts, as Magna Charta, a bill of rights, &c. were able to limit, by degrees, the royal prerogatives, and establish their own liberties. The first combination was, probably, the accidental effect of pre-existing circumstances; but there was an admirable balance of interests in it, which has been the parent of English liberty, and excellent regulations enjoyed since that time. The executive power having been uniformly in the king, and he the visible head of the nation, it was chimerical for the greatest lord or most popular leader, consistent with the state of the government, and opinion of the people, to seriously think of becoming the king's rival, or to aim at even a share of the executive power; the greatest subject's prospect was only in acquiring a respectable influence in the house of commons, house of lords, or in the ministry; circumstances at once made it the interests of the leaders of the people to stand by them. Far otherwise was it with the ephori in Sparta, and tribunes in Rome. The leaders in England have led the people to freedom, in almost all other countries to servitude. The people in England

have made use of deliberate exertions, their safest and most efficient weapons. In other countries they have often acted like mobs, and been enslaved by their enemies, or by their own leaders. In England, the people have been led uniformly, and systematically by their representatives to secure their rights by compact, and to abolish innovations upon the government: they successively obtained Magna Charta, the powers of taxation, the power to propose laws, the habeas corpus act, bill of rights, &c. they, in short, secured general and equal liberty, security to their persons and property; and, as an everlasting security and bulwark of their liberties, they fixed the democratic branch in the legislature, and jury trial in the execution of the laws, the freedom of the press, &c.

In Rome, and most other countries, the reverse of all this is true. In Greece, Rome, and wherever the civil law has been adopted, torture has been admitted. In Rome the people were subject to arbitrary confiscations, and even their lives would be arbitrarily disposed of by consuls, tribunes, dictators, masters, &c. half of the inhabitants were slaves, and the other half never knew what equal liberty was; yet in England the people have had king, lords, and commons; in Rome they had consuls, senators and tribunes: why then was the government of England so mild and favourable to the body of the people, and that of Rome an ambitious and oppressive aristocracy? Why in England have the revolutions always ended in stipulations in favour of general liberty, equal laws, and the common rights of the people, and in most other countries in favour only of a few influential men? The reasons, in my mind, are obvious: In England the people have been substantially represented in many respects; in the other countries it has not been so. Perhaps a small degree of attention to a few simple facts will illustrate this.—In England, from the oppressions of the Norman kings to the revolution in 1688, during which period of two or three hundred years, the English liberties were ascertained and established, the aristocratic part of that nation was substantially represented by a very large number of nobles, possessing similar interests and feelings with those they represented. The body of the people, about four or five millions, then mostly a frugal landed people, were represented by about five hundred representatives, taken not from the order of men which formed the aristocracy, but from the body of the people, and possessed of the same interests and feelings. De Lome, speaking of the British representation, expressly founds all his reasons on this union; this similitude of interests, feelings, views and circumstances. He observes, the English have preserved their liberties, because they and their leaders or representatives have been strictly united in interests, and in contending for gen-

eral liberty.[2] Here we see a genuine balance founded in the actual state of things. The whole community, probably, not more than two-fifths more numerous than we now are, were represented by seven or eight hundred men; the barons stipulated with the common people, and the king with the whole. Had the legal distinction between lords and commons been broken down, and the people of that island been called upon to elect forty-five senators, and one hundred and twenty representatives, about the proportion we propose to establish, their whole legislature evidently would have been of the natural aristocracy, and the body of the people would not have had scarcely a single sincere advocate; their interests would have been neglected, general and equal liberty forgot, and the balance lost; contests and conciliations, as in most other countries, would have been merely among the few, and as it might have been necessary to serve their purposes, the people at large would have been flattered or threatened, and probably not a single stipulation made in their favour.

In Rome the people were miserable, though they had three orders, the consuls, senators and tribunes, and approved the laws, and all for want of a genuine representation. The people were too numerous to assemble, and do any thing properly themselves; the voice of a few, the dupes of artifice, was called the voice of the people. It is difficult for the people to defend themselves against the arts and intrigues of the great, but by selecting a suitable number of men fixed to their interests to represent them, and to oppose ministers and senators. And the people's all depends on the number of the men selected, and the manner of doing it. To be convinced of this, we need only attend to the reason of the case, the conduct of the British commons, and of the Roman tribunes: equal liberty prevails in England, because there was a representation of the people, in fact and reality, to establish it; equal liberty never prevailed in Rome, because there was but the shadow of a representation. There were consuls in Rome annually elected to execute the laws, several hundred senators represented the great families; the body of the people annually chose tribunes from among themselves to defend them and to secure their rights; I think the number of tribunes annually chosen never exceeded ten. This representation, perhaps, was not proportionally so numerous as the representation proposed in the new plan; but the difference will not appear to be so great, when it shall be recollected, that these tribunes were chosen annually; that the great patrician families were not admitted to these offices of tribunes, and that the people of Italy who elected the tribunes were a long while, if not always, a small people compared with the people of the United States. What was the consequence of this triffling representation? The

people of Rome always elected for their tribunes men conspicuous for their riches, military commands, professional popularity, &c. great commoners, between whom and the noble families there was only the shadowy difference of legal distinction. Among all the tribunes the people chose for several centuries, they had scarcely five real friends to their interests. These tribunes lived, felt and saw, not like the people, but like the great patrician families, like senators and great officers of state, to get into which it was evident, by their conduct, was their sole object. These tribunes often talked about the rights and prerogatives of the people, and that was all; for they never even attempted to establish equal liberty: so far from establishing the rights of the people, they suffered the senate, to the exclusion of the people, to engross the powers of taxation; those excellent and almost only real weapons of defence even the people of England possess. The tribunes obtained that the people should be eligible to some of the great offices of state, and marry, if they pleased, into the noble families; these were advantages in their nature, confined to a few elevated commoners, and of triffling importance to the people at large. Nearly the same observations may be made as to the ephori of Sparta. . . .

LETTER XVI.

JANUARY 20, 1788.

DEAR SIR, Having gone through with the organization of the government, I shall now proceed to examine more particularly those clauses which respect its powers. I shall begin with those articles and stipulations which are necessary for accurately ascertaining the extent of powers, and what is given, and for guarding, limiting, and restraining them in their exercise. We often find, these articles and stipulations placed in bills of rights; but they may as well be incorporated in the body of the constitution, as selected and placed by themselves. The constitution, or whole social compact, is but one instrument, no more or less, than a certain number of articles or stipulations agreed to by the people, whether it consists of articles, sections, chapters, bills of rights, or parts of any other denomination, cannot be material. Many needless observations, and idle distinctions, in my opinion, have been made respecting a bill of rights. On the one hand, it seems to be considered as a necessary distinct limb of the constitution, and as containing a certain number of very valuable articles, which are applicable to all societies; and, on the other, as useless, especially in a federal government, possessing only enumerated power—nay, dangerous, as individual rights are numerous, and not easy to be enumerated in a bill of rights, and from articles, or stipulations, securing some of them, it may be inferred, that others not mentioned are surrendered. There appears

to me to be general indefinite propositions without much meaning—and the man who first advanced those of the latter description, in the present case, signed the federal constitution, which directly contradicts him.[3] The supreme power is undoubtedly in the people, and it is a principle well established in my mind, that they reserve all powers not expressly delegated by them to those who govern; this is as true in forming a state as in forming a federal government. There is no possible distinction but this founded merely in the different modes of proceeding which take place in some cases. In forming a state constitution, under which to manage not only the great but the little concerns of a community: the powers to be possessed by the government are often too numerous to be enumerated; the people to adopt the shortest way often give general powers, indeed all powers, to the government, in some general words, and then, by a particular enumeration, take back, or rather say they however reserve certain rights as sacred, and which no laws shall be made to violate: hence the idea that all powers are given which are not reserved; but in forming a federal constitution, which *ex vi termine*,[4] supposes state governments existing, and which is only to manage a few great national concerns, we often find it easier to enumerate particularly the powers to be delegated to the federal head, than to enumerate particularly the individual rights to be reserved; and the principle will operate in its full force, when we carefully adhere to it. When we particularly enumerate the powers given, we ought either carefully to enumerate the rights reserved, or be totally silent about them; we must either particularly enumerate both, or else suppose the particular enumeration of the powers given adequately draws the line between them and the rights reserved, particularly to enumerate the former and not the latter, I think most advisable: however, as men appear generally to have their doubts about these silent reservations, we might advantageously enumerate the powers given, and then in general words, according to the mode adopted in the 2d art. of the confederation, declare all powers, rights and privileges, are reserved, which are not explicitly and expressly given up. People, and very wisely too, like to be express and explicit about their essential rights, and not to be forced to claim them on the precarious and unascertained tenure of inferences and general principles, knowing that in any controversy between them and their rulers, concerning those rights, disputes may be endless, and nothing certain:—But admitting, on the general principle, that all rights are reserved of course, which are not expressly surrendered, the people could with sufficient certainty assert their rights on all occasions, and establish them with ease, still there are infinite advantages in particularly enumerating many of

the most essential rights reserved in all cases; and as to the less important ones, we may declare in general terms, that all not expressly surrendered are reserved. We do not by declarations change the nature of things, or create new truths, but we give existence, or at least establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot. If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book. What is the usefulness of a truth in theory, unless it exists constantly in the minds of the people, and has their assent:—we discern certain rights, as the freedom of the press, and the trial by jury, &c. which the people of England and of America of course believe to be sacred, and essential to their political happiness, and this belief in them is the result of ideas at first suggested to them by a few able men, and of subsequent experience; while the people of some other countries hear these rights mentioned with the utmost indifference; they think the privilege of existing at the will of a despot much preferable to them. Why this difference amongst beings every way formed alike. The reason of the difference is obvious—it is the effect of education, a series of notions impressed upon the minds of the people by examples, precepts and declarations. When the people of England got together, at the time they formed Magna Charta, they did not consider it sufficient, that they were indisputably entitled to certain natural and unalienable rights, not depending on silent titles, they, by a declaratory act, expressly recognized them, and explicitly declared to all the world, that they were entitled to enjoy those rights; they made an instrument in writing, and enumerated those they then thought essential, or in danger, and this wise men saw was not sufficient; and therefore, that the people might not forget these rights, and gradually become prepared for arbitrary government, their discerning and honest leaders caused this instrument to be confirmed near forty times, and to be read twice a year in public places, not that it would lose its validity without such confirmations, but to fix the contents of it in the minds of the people, as they successively come upon the stage.—Men, in some countries do not remain free, merely because they are entitled to natural and unalienable rights; men in all countries are entitled to them, not because their ancestors once got together and enumerated them on paper, but because, by repeated negociations and declarations, all parties are brought to realize them, and of course to believe them to be sacred. Were it necessary, I might shew the wisdom of our past conduct, as a people in not merely comforting ourselves that we were entitled to freedom, but in constantly keeping in view, in addresses, bills of rights,

in news-papers, &c. the particular principles on which our freedom must always depend.

It is not merely in this point of view, that I urge the engrafting in the constitution additional declaratory articles. The distinction, in itself just, that all powers not given are reserved, is in effect destroyed by this very constitution, as I shall particularly demonstrate—and even independent of this, the people, by adopting the constitution, give many general undefined powers to congress, in the constitutional exercise of which, the rights in question may be effected. Gentlemen who oppose a federal bill of rights, or further declaratory articles, seem to view the subject in a very narrow imperfect manner. These have for their objects, not only the enumeration of the rights reserved, but principally to explain the general powers delegated in certain material points, and to restrain those who exercise them by fixed known boundaries. Many explanations and restrictions necessary and useful, would be much less so, were the people at large all well and fully acquainted with the principles and affairs of government. There appears to be in the constitution, a studied brevity, and it may also be probable, that several explanatory articles were omitted from a circumstance very common. What we have long and early understood ourselves in the common concerns of the community, we are apt to suppose is understood by others, and need not be expressed; and it is not unnatural or uncommon for the ablest men most frequently to make this mistake. To make declaratory articles unnecessary in an instrument of government, two circumstances must exist; the rights reserved must be indisputably so, and in their nature defined; the powers delegated to the government, must be precisely defined by the words that convey them, and clearly be of such extent and nature as that, by no reasonable construction, they can be made to invade the rights and prerogatives intended to be left in the people.

The first point urged, is, that all power is reserved not expressly given, that particular enumerated powers only are given, that all others are not given, but reserved, and that it is needless to attempt to restrain congress in the exercise of powers they possess not. This reasoning is logical, but of very little importance in the common affairs of men; but the constitution does not appear to respect it even in any view. To prove this, I might cite several clauses in it. I shall only remark on two or three. By article 1, section 9, ''No title of nobility shall be granted by congress.'' Was this clause omitted, what power would congress have to make titles of nobility? in what part of the constitution would they find it? The answer must be, that congress would have no such power—that the people, by adopting the constitution, will not part with it. Why then

by a negative clause, restrain congress from doing what it would have no power to do? This clause, then, must have no meaning, or imply, that were it omitted, congress would have the power in question, either upon the principle that some general words in the constitution may be so construed as to give it, or on the principle that congress possess the powers not expressly reserved. But this clause was in the confederation, and is said to be introduced into the constitution from very great caution. Even a cautionary provision implies a doubt, at least, that it is necessary; and if so in this case, clearly it is also alike necessary in all similar ones. The fact appears to be, that the people in forming the confederation, and the convention, in this instance, acted, naturally, they did not leave the point to be settled by general principles and logical inferences; but they settle the point in a few words, and all who read them at once understand them.

The trial by jury in criminal as well as in civil causes, has long been considered as one of our fundamental rights, and has been repeatedly recognized and confirmed by most of the state conventions. But the constitution expressly establishes this trial in criminal, and wholly omits it in civil causes. The jury trial in criminal causes, and the benefit of the writ of habeas corpus, are already as effectually established as any of the fundamental or essential rights of the people in the United States. This being the case, why in adopting a federal constitution do we now establish these, and omit all others, or all others, at least, with a few exceptions, such as again agreeing there shall be no ex post facto laws, no titles of nobility, &c. We must consider this constitution when adopted as the supreme act of the people, and in construing it hereafter, we and our posterity must strictly adhere to the letter and spirit of it, and in no instance depart from them: in construing the federal constitution, it will be not only impracticable, but improper to refer to the state constitutions. They are entirely distinct instruments and inferior acts: besides, by the people's now establishing certain fundamental rights, it is strongly implied, that they are of opinion, that they would not otherwise be secured as a part of the federal system, or be regarded in the federal administration as fundamental. Further, these same rights, being established by the state constitutions, and secured to the people, our recognizing them now, implies, that the people thought them insecure by the state establishments, and extinguished or put afloat by the new arrangement of the social system, unless re-established.—Further, the people, thus establishing some few rights, and remaining totally silent about others similarly circumstanced, the implication indubitably is, that they mean to relinquish the latter, or at least feel indifferent about them. Rights, therefore, inferred from general prin-

ciples of reason, being precarious and hardly ascertainable in the common affairs of society, and the people, in forming a federal constitution, explicitly shewing they conceive these rights to be thus circumstanced, and accordingly proceed to enumerate and establish some of them, the conclusion will be, that they have established all which they esteem valuable and sacred. On every principle, then, the people especially having began, ought to go through enumerating, and establish particularly all the rights of individuals, which can by any possibility come in question in making and executing federal laws. I have already observed upon the excellency and importance of the jury trial in civil as well as in criminal causes, instead of establishing it in criminal causes only; we ought to establish it generally;—instead of the clause of forty or fifty words relative to this subject, why not use the language that has always been used in this country, and say, "the people of the United States shall always be entitled to the trial by jury." This would shew the people still hold the right sacred, and enjoin it upon congress substantially to preserve the jury trial in all cases, according to the usage and custom of the country. I have observed before, that it is *the jury trial* we want; the little different appendages and modifications tacked to it in the different states, are no more than a drop in the ocean: the jury trial is a solid uniform feature in a free government; it is the substance we would save, not the little articles of form.

Security against expost facto laws, the trial by jury, and the benefits of the writ of habeas corpus, are but a part of those inestimable rights the people of the United States are entitled to, even in judicial proceedings, by the course of the common law. These may be secured in general words, as in New-York, the Western Territory, &c. by declaring the people of the United States shall always be entitled to judicial proceedings according to the course of the common law, as used and established in the said states.[5] Perhaps it would be better to enumerate the particular essential rights the people are entitled to in these proceedings, as has been done in many of the states, and as has been done in England. In this case, the people may proceed to declare, that no man shall be held to answer to any offence, till the same be fully described to him; nor to furnish evidence against himself: that, except in the government of the army and navy, no person shall be tried for any offence, whereby he may incur loss of life, or an infamous punishment, until he be first indicted by a grand jury: that every person shall have a right to produce all proofs that may be favourable to him, and to meet the witnesses against him face to face: that every person shall be entitled to obtain right and justice freely and without delay: that all persons shall have a right to be secure from all unreasonable searches

and seizures of their persons, houses, papers, or possessions; and that all warrants shall be deemed contrary to this right, if the foundation of them be not previously supported by oath, and there be not in them a special designation of persons or objects of search, arrest, or seizure: and that no person shall be exiled or molested in his person or effects, otherwise than by the judgment of his peers, or according to the law of the land. A celebrated writer observes upon this last article, that in itself it may be said to comprehend the whole end of political society.[6] These rights are not necessarily reserved, they are established, or enjoyed but in few countries: they are stipulated rights, almost peculiar to British and American laws. In the execution of those laws, individuals, by long custom, by magna charta, bills of rights &c. have become entitled to them. A man, at first, by act of parliament, became entitled to the benefits of the writ of habeas corpus—men are entitled to these rights and benefits in the judicial proceedings of our state courts generally: but it will by no means follow, that they will be entitled to them in the federal courts, and have a right to assert them, unless secured and established by the constitution or federal laws. We certainly, in federal processes, might as well claim the benefits of the writ of habeas corpus, as to claim trial by a jury—the right to have council—to have witnesses face to face—to be secure against unreasonable search warrants, &c. was the constitution silent as to the whole of them:—but the establishment of the former, will evince that we could not claim them without it; and the omission of the latter, implies they are relinquished, or deemed of no importance. These are rights and benefits individuals acquire by compact; they must claim them under compacts, or immemorial usage—it is doubtful, at least, whether they can be claimed under immemorial usage in this country; and it is, therefore, we generally claim them under compacts, as charters and constitutions.

The people by adopting the federal constitution, give congress general powers to institute a distinct and new judiciary, new courts, and to regulate all proceedings in them, under the eight limitations mentioned in a former letter;[7] and the further one, that the benefits of the habeas corpus act shall be enjoyed by individuals. Thus general powers being given to institute courts, and regulate their proceedings, with no provision for securing the rights principally in question, may not congress so exercise those powers, and constitutionally too, as to destroy those rights? clearly, in my opinion, they are not in any degree secured. But, admitting the case is only doubtful, would it not be prudent and wise to secure them and remove all doubts, since all agree the people ought to enjoy these valuable rights, a very few men excepted, who seem to be rather of opinion that there is little or nothing in them?

Were it necessary I might add many observations to shew their value and political importance.

The constitution will give congress general powers to raise and support armies. General powers carry with them incidental ones, and the means necessary to the end. In the exercise of these powers, is there any provision in the constitution to prevent the quartering of soldiers on the inhabitants? you will answer, there is not. This may sometimes be deemed a necessary measure in the support of armies; on what principle can the people claim the right to be exempt from this burden? they will urge, perhaps, the practice of the country, and the provisions made in some of the state constitutions—they will be answered, that their claim thus to be exempt, is not founded in nature, but only in custom and opinion, or at best, in stipulations in some of the state constitutions, which are local, and inferior in their operation, and can have no controul over the general government—that they had adopted a federal constitution—had noticed several rights, but had been totally silent about this exemption—that they had given general powers relative to the subject, which, in their operation, regularly destroyed the claim. Though it is not to be presumed, that we are in any immediate danger from this quarter, yet it is fit and proper to establish, beyond dispute, those rights which are particularly valuable to individuals, and essential to the permanency and duration of free government. An excellent writer observes, that the English, always in possession of their freedom, are frequently unmindful of the value of it:[8] we, at this period, do not seem to be so well off, having, in some instances abused ours; many of us are quite disposed to barter it away for what we call energy, coercion, and some other terms we use as vaguely as that of liberty—There is often as great a rage for change and novelty in politics, as in amusements and fashions.

All parties apparently agree, that the freedom of the press is a fundamental right, and ought not to be restrained by any taxes, duties, or in any manner whatever. Why should not the people, in adopting a federal constitution, declare this, even if there are only doubts about it. But, say the advocates, all powers not given are reserved.—true; but the great question is, are not powers given, in the excercise of which this right may be destroyed? The people's or the printers claim to a free press, is founded on the fundamental laws, that is, compacts, and state constitutions, made by the people. The people, who can annihilate or alter those constitutions, can annihilate or limit this right. This may be done by giving general powers, as well as by using particular words. No right claimed under a state constitution, will avail against a law of the union, made in pursuance of the federal constitution: therefore

the question is, what laws will congress have a right to make by the constitution of the union, and particularly touching the press? By art. 1. sect. 8. congress will have power to lay and collect taxes, duties, imposts and excise. By this congress will clearly have power to lay and collect all kind of taxes whatever—taxes on houses, lands, polls, industry, merchandize, &c.—taxes on deeds, bonds, and all written instruments—on writs, pleas, and all judicial proceedings, on licences, naval officers papers, &c. on newspapers, advertisements, &c. and to require bonds of the naval officers, clerks, printers, &c. to account for the taxes that may become due on papers that go through their hands. Printing, like all other business, must cease when taxed beyond its profits; and it appears to me, that a power to tax the press at discretion, is a power to destroy or restrain the freedom of it. There may be other powers given, in the exercise of which this freedom may be effected; and certainly it is of too much importance to be left thus liable to be taxed, and constantly to constructions and inferences. A free press is the channel of communication as to mercantile and public affairs; by means of it the people in large countries ascertain each others sentiments; are enabled to unite, and become formidable to those rulers who adopt improper measures. Newspapers may sometimes be the vehicles of abuse, and of many things not true; but these are but small inconveniencies, in my mind, among many advantages. A celebrated writer, I have several times quoted, speaking in high terms of the English liberties, says, "lastly the key stone was put to the arch, by the final establishment of the freedom of the press."[9] I shall not dwell longer upon the fundamental rights, to some of which I have attended in this letter, for the same reasons that these I have mentioned, ought to be expressly secured, lest in the exercise of general powers given they may be invaded: it is pretty clear, that some other of less importance, or less in danger, might with propriety also be secured. . . .

1. A reference to Jean Louis De Lolme, *The Constitution of England* . . . (London, 1816), which was first published in French in 1771. Between 1775 and 1788, more than ten English-language editions appeared, none of them in America.

2. See De Lolme, *The Constitution of England* . . . , Book II, chapter VI, 256–59. "Federal Farmer" refers to a footnote at the end of the chapter entitled "Advantages that accrue to the People from appointing Representatives." The footnote reads: "All the above reasoning essentially requires that the representatives of the people should be united in interests with the people. We shall soon see that this union really prevails in the English constitution, and may be called the master-piece of it."

3. See James Wilson's speech of 6 October 1787 (BoR, II, 25–28).

4. Latin legal term: "From or by the force of the term. From the very meaning of the expression used." See Blackstone, *Commentaries*, Book II, chapter 7, p. 109.

5. See BoR, I, 88–89, 143; BoR, II, 487, note 1.

6. Blackstone, *Commentaries*, Book III, chapter 23, 379. Sir William Blackstone states that "The impartial administration of justice, which secures both our persons and our

properties, is the great end of civil society.'' Chapter XXIII deals with trial by jury which Blackstone considered ''the glory of the English law.'' It was ''the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals.''

7. See ''Federal Farmer,'' Letter XV (CC:723, 333–42).

8. De Lolme, in his introduction to *The Constitution of England* . . . (p. 4), stated that ''The English themselves (the observation cannot give them any offence) having their eyes open, as I may say, upon their liberty, from their first entrance into life, are perhaps too much familiarised with its enjoyment, to enquire, with real concern, into its causes. Having acquired practical notions of their government long before they have meditated on it, and these notions being slowly and gradually imbibed, they at length behold it without any high degree of sensibility; and they seem to me, in this respect, to be like . . . a man who, having always had a beautiful and extensive scene before his eyes, continues for ever to view it with indifference.''

9. De Lolme, *The Constitution of England* . . . , Book I, chapter III, 59.

Richard Henry Lee to George Mason
Chantilly, Westmoreland County, Va., 7 May 1788 (excerpt)[1]

. . . Give me leave now, dear sir, to make a few observations on the important business that will call you to Richmond next month. It seems pretty clear at present, that four other States, viz. North Carolina, New York, Rhode Island, and New Hampshire, will depend much upon Virginia for their determination on the Convention project of a new constitution; therefore it becomes us to be very circumspect and careful about the conduct we pursue, as, on the one hand, every possible exertion of wisdom and firmness should be employed to prevent danger to civil liberty, so, on the other hand, the most watchful precaution should take place to prevent the foes of union, order, and good government, from succeeding so far as to prevent our acceptance of the good part of the plan proposed. I submit to you, sir, whether, to form a consistent union of conduct, it would not be well for six or eight leading friends to amendments to meet privately,[2] and, having formed the best possible judgment of the members' sentiments from knowledge of the men, to see how far it may be safe to press either for modes of amendment or the extent of amendments, and to govern accordingly. But, certainly, the firmest stand should be made against the very arbitrary mode that has been pursued in some states, that is, to propose a question of absolute rejection or implicit admission. For though it is true that the convention plan looks something like this, yet I think every temperate man must agree that neither the convention, nor any set of men upon earth, have or had a right to insist upon such a question of extremity. To receive the good and reject the bad is too necessary and inherent a right to be parted with. As some subtle managers

will be upon the convention, I believe you will find entrapping questions proposed at first as a ground-work of proceeding, which will hamper, confine, and narrow all attempts to proper investigation or necessary amendment, and this will be done under the plausible pretext of losing all by attempting *any* change. I judge that it will be so here, because I observe a similar conduct has been pursued in other places, as in Maryland and Pennsylvania. I trust that such uncandid and dangerous stratagems will be opposed and prevented in the convention of Virginia, and a thorough, particular, and careful examination be first made into all its parts as a previous requisite to the formation of any question upon it. During this process a tolerable judgment may be formed of the sentiments of the generality, and a clue furnished for forming successful propositions for amendment, as the candid friends to this system admit that amendments may be made to improve the plan, but say that these amendments ought to be made, and may be obtained from the new Congress without endangering a total loss of the proposed constitution. I say that those who talk thus, if they are sincere, will not object to this plan, which, as I propose it, [is] something like the proceeding of the convention parliament in 1688,[3] in the form of ratification, insert plainly and strongly such amendments as can be agreed upon, and say, that the people of Virginia do claim, demand, and insist upon these as their undoubted rights and liberties which they mean not to part with; and if these are not obtained and secured by the mode pointed out in the fifth article of the convention plan, in two years after the meeting of the new Congress, that Virginia shall, in that case, be considered as disengaged from this ratification. Under this proposition a development will be made of the sincerity of those who advocate the new plan, the beneficial parts of it retained, and a just security given to civil liberty. In the fifth article it is stated that two-thirds of Congress may propose amendments, which, being approved by three-fourths of the legislatures, become parts of the constitution. By this mode, the new Congress may obtain our amendments without risking the convulsion of conventions, and the friends of the plan will be gratified in what they say is necessary; the putting the government in motion, when, as they again say, amendments may and ought to be obtained. By this mode, too, in all probability, the undetermined States may be brought to harmonize, and the formidable minorities, in the assenting states, may be quieted. By this friendly and reasonable accommodation, the perpetual distrust and opposition, that will inevitably follow the total adoption of the plan, from the state legislatures, may be happily prevented, and friendly united exertions take

place. Much reflection has convinced me that this mode is the best that I have had an opportunity of contemplating. I have, therefore, taken the liberty of recommending it to your serious and patriotic attention; in the formation of these amendments, *localities* ought to be avoided as much as possible. . . .

1. Printed: Richard H. Lee, *Memoir of the Life of Richard Henry Lee and His Correspondence* . . . (2 vols., Philadelphia, 1825), II, 88–90. Chantilly was Lee's plantation in Westmoreland County. For the entire letter, see RCS:Va., 784–87n.

2. For such a meeting of the supporters of amendments, called the "Comm[itt]ee of Opposition" by William Grayson and "our Republican Society" by Patrick Henry (both of them members of the state Convention), see George Mason to John Lamb, 9 June 1788 (BoR, III).

3. See Lee to Edmund Pendleton, 26 May, note 4 (BoR, II, 478–79n).

Nathan Dane to Samuel Adams
New York, 10 May 1788 (excerpt)[1]

Yesterday were sent to me inclosed—the inclosed pamphlet and printed letter, with a request to convey them to you, which I do myself the honor to transmit accordingly[2]—So far as my information extends the sentiments expressed by this writer, very generally meet the approbation of those who aim at Just and uncorrupt Government on republican principles—nor do I perceive any thing in this publication in the least inconsistent with the determination of the Massa. Convention—a determination, in my opinion, by far the wisest & best that has been made on the Subject—for tho the situation of the Country made it prudent to adopt the Constitution, and put it into operation; yet, clear I am, that we ought not to relax a moment in our attention and vigilance for further guarding and checking the exercise of powers given by the Constitution, and for securing the liberties of America, and an honest administration of Government on known and certain principles—My fears and apprehensions do not arise altogether from a consideration of the faults in the new Constitution; but, in a considerable measure, from a full persuasion that we have many men, and able ones too, in this Country who have a disposition to make a bad use of any government; and who, if not well checked and restrained by the forms of the Government, will, so far as they can have influence produce a wicked and corrupt administration—and you may, Sir, be assured that the Zealous advocates for the adoption of this Constitution, and who are pretty numerous, artful and active, do not intend that any amendments shall be adopted, even after the Constitution shall be put into operation, if they can any way prevent it—at least they will oppose all

amendments which, I believe, the republican and honest part of the Community will contend for—however, I think the *true Federalists*, or true friends of a genuine federal republic, are extending their influence and connections very considerably; and tho a large proportion of them considering our situation agree to adopt the system as presented, they are determined with candor and firmness, to endeavour to establish in these States governments on principles of freedom and equality—whether the friends of honest measures—or the friends of influence and corruption will succeed time only can determine—Sure I am, the former will have the support and advice of your Self and many others who have Steered the political Ship through the late Storm—

Eight States have now determined relative to the Constitution proposed—I can give you no certain information respecting the other five—our accounts respecting the Sentiments of the men elected for the State Conventions are various—but, on the whole, I am inclined to believe they will adopt with recommending amendments as in Massa.—in this State Virga. & N.C. the numbers for and agt. are pretty equal, as well as abilities—Your friend Mr. Lee I understand, declined going to the State Convention, principally, on account of the unhealthiness of the place where the Convention is to meet[3]. . . .

1. RC, Adams Papers, NN. Printed: CC:738.

2. Possibly a reference to the pamphlet by "A Plebeian," a New York Antifederalist. This pamphlet, which contained a "Postscript" of four pages attacking Federalist pamphleteer "A Citizen of New-York" (BoR, II, 416–18n), was first offered for sale in New York City on 17 April (BoR, II, 416–17n). The pamphlet enclosed might also have been "Federal Farmer's" *Additional Letters*, 2 May (BoR, II, 418–20), which the Antifederalist New York Federal Republican Committee began to send to other states, beginning in mid-May (CC:750).

3. For Richard Henry Lee's fear of the unhealthiness of the town of Richmond, see his 27 June letter to John Lamb (CC:750–O); and RCS:Va., 621, note 10.

The Federalist's Political Creed
Philadelphia Independent Gazetteer, 10 May 1788[1]

Mr. PRINTER, Though *religious creeds* have long since been deemed quite useless, or rather indeed extremely prejudicial to the interests of virtue and true piety; yet I must at the same time be of opinion, that *political creeds* are of a very different nature, and that no government, and least of all an arbitrary one, can be supported without some such summary of its *credenda*, or articles of faith. Our late C——n,[2] sensible of the truth of this maxim, have taken care to draw up a very full and comprehensive *creed* for the use of their creatures and expectants, who

are obliged to believe and maintain every article of it, right or wrong, on pain of political damnation. And to do those slavish expectants justice, there never was on earth a set of more firm and sincere *believers*; nor any who were willing to run greater risques in defence of their political dogmas.

This political creed however is no new invention: 'tis the old *tory system* revived by different hands. And the articles of it can be a secret to no one, who has the misfortune to converse with any of its advocates: But as such doctrines and maxims would better become the slave of a *Bashaw of three tails* than the subject of a free republican government, I shall just take the liberty, by way of specimen, to mention a few of these articles for the sake of your more uninformed readers. And

1. They maintain that the *revolution* and the *declaration* of *independence*, however important at those periods, are now to be considered as mere farces, and that nothing that was then done ought to be any bar in the way of establishing the proposed system of arbitrary power.

2. That as most of the European nations are in a state of vassalage and slavery, the Americans easily may be brought to a similar situation, and therefore ought to be reduced to the same abject condition.

3. That to compass this end, a large standing army should be kept up in time of peace, under the specious pretence of guarding us against *foreign* invasions and our frontiers against the savages; but in reality to overawe and enslave the people, who, if provoked at the violation of their rights, should at any time dare to murmur or complain, the military should be employed to *bayonet* them for their arrogance and presumption.

4. That to say the late convention was not authorised by the people at large to form an *aristocratic, consolidated* system of government for them, but merely to recommend alterations and amendments of the good old articles of confederation, is downright treason and rebellion.

5. That to assert that it was a shameful departure from the principles of the revolution and republicanism, and a base violation of the trust reposed in them, is a crime of the deepest dye, and never to be forgiven.

6. That if any man in the course of his writings should happen to give offence to a haughty favorite of the junto, it should be an express condition in the admission of every person into the new administration, that he concur in the prosecution of the author, or printer (or both if the name of the author can be extorted or discovered, no matter how vile and infamous the means) to the utmost rigor of the law, and even in contradistinction to all law and justice.

7. That the trial by jury, whether in *civil* or *criminal* cases, ought to be entirely abolished, and that the judges only of the new federal court, appointed by the *well born* in the ten-mile-square, should determine all matters of controversy between individuals.

8. That the trial by jury ought likewise to be abolished in the case of libels, and every one accused of writing or even publishing a libel, ought to be tried by *informations, attachments, interrogatories*, and the other arbitrary methods practised in the court of *star-chamber*.

9. That a libel is whatever may happen to give offence to any great man, or old woman; and the more true the charge, the more virulent the libel.

10. That an unrestrained liberty of the press should be granted to those who write and publish against the liberties of the people, but be absolutely denied to such as write against unconstitutional measures, and the abominable strides of arbitrary power, which have recently been attempted by any of the rump conclaves or conventions.

11. That the people indeed have no rights and privileges but what they enjoy at the mercy of the rich lordlings, who may, of right, deprive them of any or of all their liberties whenever they think proper.

12. That the freemen of America have no right to think for themselves, nor to chuse their own officers of government, who ought to be named and appointed by the *king elect*, the *half king* and the *senate*; these being evidently much better judges of what is for the good of the people than the people themselves.

13. That a *bill of rights* and other explicit declarations in favor of the people, are old musty things, and ought to be destroyed; and that for any set of men to declare themselves in favor of a bill of rights, is a most daring insult offered to General *Washington* and Doctor *Franklin*, who, it must be allowed by the whole world, are absolutely *infallible*.

14. That those men are best qualified to conduct the affairs of a free people, who breathe nothing but a spirit of tyranny, and who, by their violent, illegal, and unconstitutional (*consolidating, energetic*, as they are pleased to stile it) procedures, have well nigh reduced the good people of this great continent to the very eve of a civil war: And that as soon as *nine* states should accede to the new system of slavery, every one who would presume to lisp a syllable against it, ought to be taken up, imprisoned, and punished at the discretion of the judges of the supreme federal court.

Such are a few of the many articles of the *political creed* of the *federal hacks*, and how firmly they believe and diligently act up to them, is a matter of equal notoriety and grief to every real patriot in America.

1. Reprinted: *New York Journal*, 24 May.
2. The Constitutional Convention.

Pennsylvania Carlisle Gazette, 21 May 1788

A DIALOGUE, between an Anti-federalist, and a Federalist.

Anti-federalist. Good morrow neighbour John, how do you come on at your plowing?

Federalist. Middling well William, I am stopped a little by the rain, but we have good encouragement, we are blest with a fine spring.

Anti. But how do you like our public measures, and the arguments about the new Constitution?

Fed. Truly I have, until just lately, like the rest of my political brethern, lent a deaf ear to all arguments on the opposite side, and, like a good Catholic, made ignorance the mother of devotion; but I now find myself so disappointed in my expectations, that indeed William, to tell you the truth, I could wish myself your brother in politics as well as in occupation, and were it not that I would be called a turn-coat, I would publicly declare myself on the other side of the question;—for though our writers have all one text, viz. civil government, yet they differ so widely in doctrine, that I am both angry at, and ashamed of them.—To enumerate all their inconsistencies, would be a tedious task indeed.—Our greatest hero, W——n, contradicts himself most egregiously, he says, "a state government is designed for all cases whatsoever, consequently what is not reserved (by a bill of rights he must mean) is tacitly given," whereby he shows the necessity of a bill of rights, but, like a good lawyer, he altered his tone when in state convention, for there he says "in a civil government it is certain, that bills of rights are unnecessary and useless."[1]—In the Gazette, No. 120, one of our quaking friends says a bill of rights, in a state government, is indispensible:[2] but our Reflecting explainer, reprobates the very notion of it in all republican governments.[3] The American Citizen in No. 118, says, that neither the present confederation, nor proposed constitution, have any bill of rights, nor takes any notice of the liberty of the press:[4]—yet article 2, of the present confederation, expressly says, "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." Now this I think is an extensive bill of rights, though it is denied there is any; likewise the proposed constitution, secures the privilege of the writ of habeas corpus, and trial by jury in criminal cases, which certainly is part of a bill of rights; Dr. F—s—e considers the new plan a consoli-

dation, when he says, that the exercise of the sovereignty of the people, is happily by the new constitution, lodged in Congress: but a writer under the signature of a Freeman, says, it is not a consolidation; but that there are permanent marks and lines of sovereignty in each state.[5]—In a letter said to be from Philadelphia, in No. 137, (written I think with a quill of a Carlisle goose) we have curious observations, the gentleman observes, ''there can be no liberty where there is no law;'' he must be understood to mean civil law, and every body knows liberty existed before civil law or government, and does now exist where is no system of laws; but that law is necessary to preserve liberty none will deny. He further says ''there can be only two securities for liberty in any government,—viz. representation and checks,'' and by the drift of his discourse, what he means by checks, is nothing else than the different branches of the new Congress, who he supposes will be checks on each other: for he says ''a hundred principles of action in men will lead them to watch—to check—and to oppose each other, should an attempt be made by either of them on the liberties of the people,''[6] this is in effect taking it for granted, that there are no checks in the constitution, to hinder them from such attempts, and that all depends on the will or dispositions of the members of Congress. Thus, by the gentleman's own argument, the new constitution will owe its ''capital features,'' to the will of its administrators—I think none need hesitate to say, that the depravity of human nature is such, that we have reason to suspect, that principles of avarice, &c. will as readily lead them to indulge—to colude—and to support each other, as to watch, check and oppose each other.—I have been mortifyingly disappointed in my expectations from the aforesaid Reflecting explainer, you know he proposes to explain the parts of the constitution that are objected to, so as ignorant people, like me, might understand them; but his very first number cloyed my appetite,[7] so that I could digest no more of them; he makes the disinterested the judge of his observations; therefore all rational beings, in these states especially, are excluded from judging; as they are all highly interested. I presume the above contradictions cannot be reconciled by logic, what sophistry might do I know not—I wish Hermenius would try his pen—in short the contradiction which pervade our arguments have made me that I can believe nothing more of the kind. The writers on our side of the question, are much like almanac-makers, all pretending to tell the weather, and few or none hitting the truth.

Anti. Why John, you are an Anti-federalist to all intents and purposes.

Fed. I dont know what I am, but I suppose I must be something when the pinch comes; but let me have your sentiments, what do you think of the Reflections, and our Presbyterian Clergymans letter?

Anti. Why sir, I think it must be grating to the ears of sensible men, to hear so many reiterated arguments, especially as they are on the degenerating hand; as to the Reflections, time dont admit to point out one half of the absurdities contained in them, nor is it necessary as you have done this in some degree yourself; but at your request, I shall give my opinion on such of them as at present occurs to my memory—I find his first number is chiefly against a bill of rights,[8] likewise I find some observations upon it, signed thoughts at the plough[9]—and I shall make some additional observations. The common interest, or the preservation of the natural and advantageous rights of the body politic, is the thing to be aimed at by all civil government, the moment this ceases to be the object, that moment civil polity is at an end, and its opposite (despotism) takes place; now since this is the case, every plan of government wherein this provision is fully, and explicitly made, has undoubtedly a bill of rights, therefore it is impossible in the nature of things, that civil government can exist without a bill or declaration of rights, the contrary supposition would be as vain, as to suppose a superstructure without a foundation, or an obligation without promises. Therefore, I say, that properly speaking, the proposed constitution is not a plan of civil government; because what should be its whole and only object, viz. the rights of the people is left insecure and doubtful— for proof of this assertion the following may suffice—you know that by section 2, of the new plan, the president, with the concurrence of two-thirds of the senate (which may be only 10) can make such treaties as they in their wisdom or wickedness (which ever may prevail) may think proper;—which treaties will be the "supreme law of the land," paramount to all the laws and constitutions in the thirteen states, and there is no limitation here but THEIR WILL; and here I would observe, that as it is impossible to know upon what conditions treaties can be obtained (as the opposite party will have half of the bargain) it is highly necessary that there should be a particular declaration of rights, which ought not to be violated by any treaty—I presume the advocates for a bill of rights, mean no more than to have their rights secured; they do not insist on having a catalogue of them drawn up in form like a bill of scantling. Had the ten commandments been interspersed through the bible, so as to have had only one in a chapter, or one in a book, we would have had the decalogue, as surely as we now have when they are all adjoining one another in one chapter; in like manner had our rights been sufficiently secured in different parts of the constitution, we would have a bill of rights: but that this is not the case is evident to every person who reads it. Our ingenious author (Reflection) says, "when the people have any rights granted to them, all that are not

expressly mentioned are taken away, and wholly exercisable by the rulers;''[10] if this be the case, God keep us from the adoption of the new constitution! for, as you observe, we have the privilege of the writ of habeas corpus, and trial by jury in criminal cases secured to us, therefore all our other rights (according to his own argument) ''are taken away and wholly exerciseable by the rulers!''—He says in his second number ''the senators are always impeachable and subject to be turned out,['']surely he is not in earnest—I would ask the gentleman how two-thirds of the number present are impeachable in case of a treaty, when their will is the ''supreme law, &c.'' moreover they have the power of trying all impeachments—he considers it dangerous to trust the different legislatures with the management of their own elections, without a check, though he allows they are the most competent judges: but he does not tell wherein the danger lies—here he comes short in his explanation, the strangest, much less ''the weakest capacity'' cannot tell by his explanation what this danger is—however, we may guess his meaning, viz. the people would have too much liberty—time place and manner of elections, would be very convenient powers in the hands of Congress—we might then be saved the trouble of electioneering—we might have our elections in seed time, harvest, or the depth of winter, and in some remote corner of the state, convenient to the standing army, who may, by the supreme law of the land, and their superior force be enabled to vote and carry the elections at will; and we may easily guess that they would vote for those on whom they depend. Attempts of this kind you know have been made in Carlisle; and in Philadelphia have been actually carried into execution. Moreover, we would be obliged to vote by voice, and may be happily conducted, for we dare not give a wrong vote if we should be so minded, lest we should provoke some military gentleman, or young courtier to ''lay his hand upon his sword.''

He says in his fourth number, that ''their powers are expressly defined, and completely and perfectly limited;''[11] and by arrogating to themselves other powers than those laid down in the constitution, they as effectually break that constitution, as if they assumed any power which they were expressly forbidden to exercise, true, they are limited, and so is the devil, but what are they limited by—not the proposed constitution, as has been observed, but their own will and indeed, in most cases, their will is the constitution, and the proposed plan just a declaration that it shall be so.

As to the supposed Clergyman's letter, it carries few features of that character; however he smells strong of consolidation;[12] I find he longs for a sight of the grand parlour 10 miles square; no doubt he wishes

for admittance into that holy of holies, prepared for the sons of Aaron, &c.

Fed. Is there hopes of the different states agreeing upon amendments.

Anti. There is such a similarity in their proposed amendments, that we have reason to believe they will readily agree.

Fed. I would be happy to hear that matters were compromised upon good terms, and for the present I shall bid you good evening, and will return and spend a few more serious thoughts against our next meeting.

Cumberland county, May 2, 1788.

1. References to James Wilson's speech to a public meeting on 6 October 1787 and his 28 November speech in the Pensnylvania Convention (BoR, II, 25–28, 150–51).

2. A reference to "Plain Truth," which the *Carlisle Gazette* reprinted in its issues 120 and 121 on 21 and 28 November 1787 (BoR, II, 117–20n).

3. A reference to "Reflection" I, *Carlisle Gazette*, 12 March 1788 (BoR, II, 368–69).

4. A reference to "An American Citizen" IV, which the *Carlisle Gazette* reprinted in its issue 118 on 7 November 1787 (BoR, II, 56–58).

5. A reference to "A Freeman" III, *Pennsylvania Gazette*, 6 February 1788 (CC:505).

6. The letter appeared in issue 137 of the *Carlisle Gazette* on 19 March 1788 (BoR, II, 378–79).

7. See note 3 (above).

8. See note 3 (above).

9. A reference to "Thoughts at the Plough," *Carlisle Gazette*, 9 April 1788 (BoR, II, 406–9n).

10. See note 3 (above).

11. See "Reflection" IV, *Carlisle Gazette*, 16 April 1788 (RCS:Pa. Supplement, 1177–78).

12. A reference to a piece printed in the *Pennsylvania Mercury*, 29 March 1788, and reprinted in the *Carlisle Gazette*, 16 April (RCS:Pa. Supplement, 1126–28).

South Carolina Convention Recommends Amendments to Constitution, 23 May 1788

For the amendments recommended by the South Carolina Convention, see BoR, I, 247–49.

Richard Henry Lee to Edmund Pendleton Chantilly, Westmoreland County, Va., 26 May 1788 (excerpts)[1]

The manner in which we have together struggled for the just rights of human nature, with the friendly correspondence that we have maintained, entitles us, I hope, to the most unreserved confidence in each other upon the subject of human rights and the liberty of our country. ⟨It is probable that yourself, no more than I do, propose to be hereafter politically engaged; neither therefore expecting to gain or fearing to

loose, the candid part of mankind will admit us to be *impartial* Judges, at least of the arduous business that calls you to Richmond on the 2d. of next month.〉[2]

I do not recollect to have met with a sensible and candid Man who has not admitted that it would be both safer and better if amendments were made to the Constitution proposed for the government of the U. States; but the friends to the idea of amendments divide about the mode of obtaining them—Some thinking that a second Convention might do the business, whilst others fear that the attempt to remedy by another Convention would risk the whole. I have been informed that you wished Amendments, but disliked the plan of another Convention. The just weight that you have Sir in the Councils of your Country may put it in your power to save from Arbitrary Rule a great and free people. I have used the words Arbitrary Rule because great numbers fear that this *will* be the case, when they consider that it *may* be so under the new proposed System, and reflect on the unvarying progress of power in the hands of frail Man. To accomplish the ends of Society by being equal to Contingencies infinite, demands the deposit of power great and extensive indeed in the hands of Rulers. So great, as to render abuse probable, unless prevented by the most careful precautions: among which, the freedom & frequency of elections, the liberty of the Press, the Trial by Jury, and the Independency of the Judges, seem to be so capital & essential; that they ought to be secured by a Bill of Rights to regulate the discretion of Rulers in a legal way, restraining the progress of Ambition & Avarice within just bounds. Rulers must act by subordinate Agents generally, and however the former may be secure from the pursuits of Justice, the latter are forever kept in Check by the trial by Jury where that exists ''in all its Rights''. This most excellent security against oppression, is an universal, powerful and equal protector of *all*. But the benefit to be derived from this System is most effectually to be obtained from a well informed and enlightened people. Here arrises the necessity for the freedom of the Press, which is the happiest Organ of communication ever yet devised, the quickest & surest means of conveying intelligence to the human Mind. . . .

. . . I have observed Sir that the sensible and candid friends of the proposed plan agree that amendments would be proper, but fear the consequences of another Convention. I submit the following as an effectual compromise between the Majorities, and the formidable Minorities that generally prevail.

It seems probable that the determinations of four States[3] will be materially influenced by what Virginia shall do—This places a strong obligation on our country to be unusually cautious and circumspect in

our Conventional conduct. The Mode that I would propose is something like that pursued by the Convention Parliament of England in 1688.[4] In our Ratification insert plainly and strongly such amendments as can be agreed upon, and say; that the people of Virginia do insist upon and mean to retain them as their undoubted rights and liberties which they intend not to part with; and if these are not obtained and secured by the Mode pointed out in the 5th. article of the Convention plan in two years after the meeting of the new Congress, that Virginia shall be considered as disengaged from this Ratification. In the 5th. article it is stated that two thirds of Congress may propose amendments, which being approved by three fourths of the Legislatures become parts of the Constitution—So that the new Congress may obtain the amendments of Virginia without risking the convulsion of Conventions. Thus the beneficial parts of the new System may be retained, and a just security be given for Civil Liberty; whilst the friends of the System will be gratified in what they say is necessary, to wit, the putting the government in motion, when, as they again say, amendments may and ought to be made. The good consequences resulting from this method will probably be, that the undetermined States may be brought to harmonize, and the formidable minorities in many assenting States be quieted by so friendly and reasonable an accommodation. In this way may be happily prevented the perpetual opposition that will inevitably follow (the total adoption of the plan) from the State Legislatures; and united exertions take place. In the formation of these amendments Localities ought to be avoided as much as possible. The danger of Monopolized Trade may be avoided by calling for the consent of 3 fourths of the U. States on regulations of Commerce. The trial by Jury to be according to the course of proceeding in the State where the cause criminal or civil is tried, and confining the Supreme federal Court to the jurisdiction of Law excluding Fact. To prevent surprises, and the fixing of injurious laws, it would seem to be prudent to declare against the making [perpetual?] laws until the experience of two years at least shall have [vouched?] their utility. It being much more easy to get a good Law [continued?] than a bad one repealed. The amendments of Massachusetts [appear?] to be good so far as they go, except the 2d. and extending the 7th. [to?] foreigners as well as the Citizens of other States in this Union.[5] For th[eir?] adoption the aid of that powerful State may be secured. The freedom of the Press is by no means sufficiently attended to by Massachusetts, nor have they remedied the want of responsibility by the impolitic combination of President & Senate. ⟨No person, I think, can be alarmed at that part of the above proposition which proposes our discharge if the requisite Amendments are

not made; because, in all human probability it will be the certain means of securing their adoption for the following reasons—N.C. N.Y. R.I. & N.H. are the 4 States that are to determine after Virginia, and there being abundant reason to suppose that they will be much influenced by our determination; if they, or 3 of them join us, I presume it cannot be fairly imagined that the rest, suppose 9, will hesitate a moment to make Amendments which are of general nature, clearly for the safety of Civil Liberty against the future designs of despotism to destroy it; and which indeed is requir'd by at least half of most of those States who have adopted the new Plan; and which finally obstruct not good but bad government.⟩

It does appear to me, that in the present temper of America, if the Massachusetts amendments, with those herein suggested being added, & were inserted in the form of our ratification as before stated, that Virginia may safely agree, and I believe that the most salutary consequences would ensue. ⟨I am sure that America and the World too look with anxious expectations at us, if we change the Liberty that we have so well deserved for elective Despotism we shall suffer the evils of the change while we labor under the contempt of Mankind⟩—I pray Sir that God may bless the Convention with wisdom, maturity of Counsel, and constant care of the public liberty; and that he may have you in his holy keeping. ⟨I find that as usual, I have written to *you* a long letter—but you are good and the subject is copious—I like to reason with a reasonable Man, but I disdain to notice those Scribblers in the Newspapers altho they have honored me with their abuse—My attention to them will never exist whilst there is a Cat or a Spaniel in the House!⟩

1. RC, Miscellaneous Collection, Henry E. Huntington Library, San Marino, Calif. For the entire letter, see CC:755. On 27 June, Lee sent a copy of this letter to John Lamb who was the chairman of the Federal Republican Committee of New York. This committee was trying to organize support for amendments to the Constitution in those states that had not yet ratified the Constitution. (The copy sent to Lamb, misdated 22 May, is in the Lamb Papers, in the New-York Historical Society. Omissions in this copy are in angle brackets.) For Lee's 27 June letter to Lamb, see CC:750–O.

2. Pendleton, a Caroline County delegate, was elected president of the state Convention, which convened in Richmond on 2 June 1788. He voted to ratify the Constitution on 25 June.

3. New Hampshire, New York, North Carolina, and Rhode Island—the four states which, along with Virginia, had not yet ratified the Constitution.

4. In December 1688 James II fled England. Prince William of Orange, who was already in England, took control of the military and called for the election of a parliament. An election was held and on 22 January 1689 the Convention Parliament met. Since it had not been called by a royal summons, the Convention was technically not a parliament. Nevertheless, on 13 February the Convention Parliament presented to Prince William

and his wife Princess Mary (the daughter of James II) the Declaration of Rights, which enumerated the arbitrary acts of James II and declared them to be illegal. The Declaration also resolved that William and Mary were king and queen of England. William and Mary accepted the Declaration and were proclaimed king and queen. Soon after, the Convention passed an act declaring itself to be the Parliament of England, and in December 1689 the Declaration of Rights was enacted into law as the Bill of Rights.

5. For the second and seventh Massachusetts amendments, see BoR, I, 244.

George Mason to Thomas Jefferson
Gunston Hall, Fairfax County, Va., 26 May 1788 (excerpt)[1]

. . . I make no Doubt that You have long ago received Copys of the new Constitution of Government, framed last Summer, by the Delegates of the several States, in general Convention at Philadelphia.[2]—Upon the most mature Consideration I was capable of, and from Motives of sincere Patriotism, I was under the Necessity of refusing my Signature, as one of the Virginia Delegates; and drew up some general Objections; which I intended to offer, by Way of Protest; but was discouraged from doing so, by the precipitate, & intemperate, not to say indecent Manner, in which the Business was conducted, during the last week of the Convention, after the Patrons of this new plan found they had a decided Majority in their Favour;[3] which was obtained by a Compromise between the Eastern, & the two Southern States, to permit the latter to continue the Importation of Slaves for twenty odd Years; a more favourite Object with them, than the Liberty and Happiness of the People.[4]—

These Objections of mine were first printed very incorrectly, without my Approbation, or Privity; which laid me under some kind of Necessity of publishing them afterwards, myself.—I take the Liberty of enclosing You a Copy of them.[5] You will find them conceived in general Terms; as I wished to confine them to a narrow compass.—There are many other things very objectionable in the proposed new Constitution; particularly the almost unlimited Authority over the Militia of the several States; whereby, under Colour of regulating, they may disarm, or render useless the Militia, the more easily to govern by a standing Army; or they may harrass the Militia, by such rigid Regulations, and intollerable Burdens, as to make the People themselves desire it's Abolition.—By their Power over the Elections, they may so order them, as to deprive the People at large of any Share in the Choice of their Representatives.—By the Consent of Congress, Men in the highest Offices of Trust in the United States may receive any Emolument, Place, or Pension from a forreign Prince, or Potentate; which is setting themselves up to the highest Bidder.—But it would be tedious to enumerate all the Ob-

jections; and I am sure they cannot escape Mr. Jefferson's Observation.—Delaware—Pensylvania—Jersey—Connecticut—Georgia, and Maryland have ratifyed the new Government (for surely it is not a Confederation) without Amendments[6]—Massachusets has accompanyed the Ratification with proposed Amendments[7]—Rhode Island has rejected it[8]—New Hampshire, after some Deliberation, adjourned their Convention to June—The Convention of South Carolina is now sitting—The Convention of new York meets in June—that of North Carolina in July—and the Convention of Virginia meets on the first Monday in June. I shall set out for Richmond this week, in order to attend it.—From the best Information I have had, the Members of the Virginia Convention are so equally divided upon the Subject, that no Man can, at present, form any certain Judgement of the Issue.[9] There seems to be a great Majority for Amendments; but many are for ratifying first, and amending afterwards. This Idea appears to me so utterly absurd, that I can not think any Man of Sense candid, in Proposing it. . . .

1. RC, Jefferson Papers, DLC. Printed: Boyd, XIII, 204–7n. "Gunston Hall" was Mason's estate in Fairfax County, Va. As a postscript to this letter, not printed here, Mason transcribed his anti-paper-money resolutions that the House of Delegates had unanimously adopted in November 1787. Mason hoped that these resolutions had "given that iniquitous P[r]oject it's Death's-Wound." For a discussion of these resolutions, see RCS:Va., Vol. 1, xxviii.

2. In fact, Jefferson had received several copies of the Constitution (CC:Vol. 1, pp. 223n, 438, 442).

3. See BoR, I, 124–26.

4. Under this compromise, Congress could not prohibit the importation of slaves before 1808 and commercial legislation could be adopted by a simple majority of both houses of Congress, not the two-thirds vote favored by the Southern States. In his objections, Mason attacked both aspects of the compromise (CC:138, p. 350).

5. On 21, 22, and 23 November, Mason's objections were printed in the *Massachusetts Centinel*, *Virginia Journal*, and Winchester *Virginia Gazette*, respectively. It is unlikely that Mason had anything to do with any of these printings, all of which appeared independently of each other. The printing to which he alludes and the one which he sent to Jefferson was perhaps the folio broadside imprint made by Thomas Nicolson of the Richmond *Virginia Gazette and Weekly Advertiser*. For the text of Mason's objections and their publication, see BoR, II, 28–31.

6. For the amendments considered by the Maryland Convention, see BoR, I, 245–47.

7. For the Massachusetts amendments, see BoR, I, 243–45n.

8. For the 24 March referendum in Rhode Island rejecting the Constitution, see CC:664; RCS:R.I., 151–228.

9. For a discussion of the divisions in the Virginia Convention, see RCS:Va., 898–99.

Thomas Jefferson to Edward Carrington
Paris, 27 May 1788 (excerpt)[1]

I have received with great pleasure your friendly letter of Apr. 24.[2] it has come to hand after I had written my letters for the present con-

veiance, and just in time to add this to them. I learn with great pleasure the progress of the new Constitution—indeed I have presumed it would gain on the public mind, as I confess it has on my own. at first, tho I saw that the great mass & groundwork was good, I disliked many appendages, reflection and discussion have cleared off most of these—you have satisfied me as to the query I had put to you about the right of direct taxation.[3] ⟨my first wish was that 9 states would adopt it in order to ensure what was good in it, & that the others might, by holding off, produce the necessary amendments.[4] but the plan of Massachusets is far preferable, and will I hope be followed by those who are yet to decide.[5] there are two amendments only which I am anxious for. 1. a bill of rights, which it is so much the interest of all to have, that I conceive it must be yielded, the 1 st. amendment proposed by Massachusets will in some degree answer this end, but not so well.[6] it will do too much in some instances & too little in others, it will cripple the federal government in some cases where it ought to be free, and not restrain it in some others where restraint would be right, the 2d. amendment which appears to me essential is the restoring the principle of necessary rotation, particularly to the Senate & Presidency: but most of all to the last, re-eligibility makes him an officer for life, and the disasters inseparable from an elective monarchy, render it preferable, if we cannot tread back that step, that we should go forward & take refuge in an hereditary one. of the correction of this article however I entertain no present hope, because I find it has scarcely excited an objection in America, and if it does not take place ere long, it assuredly never will, the natural progress of things is for liberty to yeild, & government to gain ground, as yet our spirits are free, our jealousy is only put to sleep by the unlimited confidence we all repose in the person to whom we all look as our president, after him inferior characters may perhaps succeed and awaken us to the danger which his merit has led us into, for the present however, the general adoption is to be prayed for; and I wait with great anxiety for the news from Maryland & S. Carolina which have decided before this, and wish that Virginia, now in session, may give the 9th. vote of approbation, there could then be no doubt of N. Carolina, N. York, & New Hampshire.⟩ but what do you propose to do with Rhode island? as long as there is hope, we should give her time. I cannot conceive but that she will come to rights in the long run. force, in whatever form, would be a dangerous precedent. . . .

1. FC, Jefferson Papers, DLC. Printed: Boyd, XIII, 208–10. A press copy of an extract of this letter, enclosed in angle brackets, is in the James Monroe Papers at the Library of Congress.

2. See RCS:Va., 754–56.

3. In his letter of 21 December, Jefferson asked Carrington whether it would have been better if the Constitution gave Congress full authority over imposts but left direct taxation

to the states. Carrington answered on 24 April, stating that Congress needed the power of direct taxation in times of emergency and when states failed to provide Congress with revenue (RCS:Va., 755).

4. Jefferson outlined this procedure in several letters—to William Stephens Smith, James Madison, and Alexander Donald, 2, 6, and 7 February, respectively (BoR, II, 301–2, 308; Boyd, XII, 568–70). Antifederalists in the Virginia and North Carolina conventions referred to the Donald letter in hopes of forestalling ratification of the Constitution. (See RCS:Va., 1052, 1088, note 7; RCS:N.C., 442, 448, note 22; and CC:814.)

5. On 3 June Jefferson wrote William Carmichael: "but I am now convinced that the plan of Massachusets is the best that is, to accept, and to amend afterwards, if the states which were to decide after her should all do the same, it is impossible but they must obtain the essential amendments, it will be more difficult if we lose this instrument, to recover what is good in it, than to correct what is bad after we shall have adopted it. it has therefore my hearty prayers, and I wait with anxiety for news of the votes of Maryland, S. Carolina, & Virginia" (Boyd, XIII, 232–33).

6. For the first Massachusetts amendment, see BoR, I, 243.

Publius: The Federalist 84
New York, 28 May 1788 (excerpts)

This essay, written by Alexander Hamilton, first appeared in Volume II of the book edition of *The Federalist*. It was reprinted as number 83 in the New York *Independent Journal*, 16, 26 July, 9 August, and as number 84 in the *New York Packet*, 29 July, 8, 12 August. It has been transcribed from the book edition.

For the entire essay, see CC:765. For a general discussion of the authorship, circulation, and impact of *The Federalist*, see CC:201, 406, 639, and Editors' Note, 28 May 1788 (CC:Vol. 6, 83–87).

Concerning several miscellaneous Objections.

In the course of the foregoing review of the constitution I have taken notice of, and endeavoured to answer, most of the objections which have appeared against it. There however remain a few which either did not fall naturally under any particular head, or were forgotten in their proper places. These shall now be discussed; but as the subject has been drawn into great length, I shall so far consult brevity as to comprise all my observations on these miscellaneous points in a single paper.

The most considerable of these remaining objections is, that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked, that the constitutions of several of the states are in a similar predicament. I add, that New-York is of this number. And yet the opposers of the new system in this state, who profess an unlimited admiration for its constitution, are among the most intemperate partizans of a bill of rights. To justify their zeal in this matter, they alledge two things; one is, that though the constitution of New-York has no bill of rights prefixed to it, yet it contains in the body of it various provisions in favour of particular privi-

leges and rights, which in substance amount to the same thing; the other is, that the constitution adopts in their full extent the common and statute law of Great-Britain, by which many other rights not expressed in it are equally secured.[1]

To the first I answer, that the constitution proposed by the convention contains, as well as the constitution of this state, a number of such provisions.

Independent of those, which relate to the structure of the government, we find the following:—Article I. section 3. clause 7. "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."—Section 9. of the same article, clause 2. "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."—Clause 3. "No bill of attainder or *ex post facto* law shall be passed."—Clause 7. "No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign state."—Article III. section 2. clause 3. "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed."—Section 3, of the same article, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."—And clause 3,[2] of the same section. "The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

It may well be a question whether these are not upon the whole, of equal importance with any which are to be found in the constitution of this state. The establishment of the writ of *habeas corpus*, the prohibition of *ex post facto* laws, and of TITLES OF NOBILITY, *to which we have no corresponding provisions in our constitution*, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or in other words, the subjecting of men to punishment for things which, when they were done,

were breaches of no law, and the practice of arbitrary imprisonments have been in all ages the favourite and most formidable instruments of tyranny. The observations of the judicious Blackstone[(a)] in reference to the latter, are well worthy of recital. "To bereave a man of life (says he) or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore *a more dangerous engine*[3] of arbitrary government." And as a remedy for this fatal evil, he is every where peculiarly emphatical in his encomiums on the habeas corpus act, which in one place he calls "the BULWARK of the British constitution."[(b)]

Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

To the second, that is, to the pretended establishment of the common and statute law by the constitution, I answer, that they are expressly made subject "to such alterations and provisions as the legislature shall from time to time make concerning the same." They are therefore at any moment liable to repeal by the ordinary legislative power, and of course have no constitutional sanction. The only use of the declaration was to recognize the ancient law, and to remove doubts which might have been occasioned by the revolution. This consequently can be considered as no part of a declaration of rights, which under our constitutions must be intended as limitations of the power of the government itself.

It has been several times truly remarked, that bills of rights are in their origin, stipulations between kings and their subjects, abrigements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the Barons, sword in hand, from king John. Such were the subsequent confirmations of that charter by subsequent princes. Such was the *petition of right* assented to by Charles the First, in the beginning of his reign. Such also was the declaration of right presented by the lords and commons to the prince of Orange in 1688, and afterwards thrown into the form of an act of parliament, called the bill of rights. It is evident, therefore, that according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here,

in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservations. "WE THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and *establish* this constitution for the United States of America." Here is a better recognition of popular rights than volumes of those aphorisms which made the principal figure in several of our state bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

But a minute detail of particular rights is certainly far less applicable to a constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns. If therefore the loud clamours against the plan of the convention on this score, are well founded, no epithets of reprobation will be too strong for the constitution of this state. But the truth is, that both of them contain all, which in relation to their objects, is reasonably to be desired.

I go further, and affirm that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power. They might urge with a semblance of reason, that the constitution ought not to be charged with the absurdity of providing against the abuse of an authority, which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it, was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.

On the subject of the liberty of the press, as much has been said, I cannot forbear adding a remark or two: In the first place, I observe that there is not a syllable concerning it in the constitution of this state, and in the next, I contend that whatever has been said about it in that of any other state, amounts to nothing. What signifies a declaration

that "the liberty of the press shall be inviolably preserved?" What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this, I infer, that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.(c) And here, after all, as intimated upon another occasion, must we seek for the only solid basis of all our rights.

There remains but one other view of this matter to conclude the point. The truth is, after all the declamation we have heard, that the constitution is itself in every rational sense, and to every useful purpose, A BILL OF RIGHTS. The several bills of rights, in Great-Britain, form its constitution, and conversely the constitution of each state is its bill of rights. And the proposed constitution, if adopted, will be the bill of rights of the union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention, comprehending various precautions for the public security, which are not to be found in any of the state constitutions. Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. It may be said that it does not go far enough, though it will not be easy to make this appear; but it can with no propriety be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of the citizens, if they are to be found in any part of the instrument which establishes the government. And hence it must be apparent that much of what has been said on this subject rests merely on verbal and nominal distinctions, which are entirely foreign from the substance of the thing. . . .

(a) Vide Blackstone's Commentaries, vol. 1, page 136.[4]
(b) Idem, vol. 4, page 438.[5]
(c) To show that there is a power in the constitution by which the liberty of the press may be affected, recourse has been had to the power of taxation. It is said that duties may be laid upon publications so high as to amount to a prohibition. I know not by what logic it could be maintained that

> the declarations in the state constitutions, in favour of the freedom of the press, would be a constitutional impediment to the imposition of duties upon publications by the state legislatures. It cannot certainly be pretended that any degree of duties, however low, would be an abrigement of the liberty of the press. We know that newspapers are taxed in Great-Britain, and yet it is notorious that the press no where enjoys greater liberty than in that country. And if duties of any kind may be laid without a violation of that liberty, it is evident that the extent must depend on legislative discretion, regulated by public opinion; so that after all, general declarations respecting the liberty of the press will give it no greater security than it will have without them. The same invasions of it may be effected under the state constitutions which contain those declarations through the means of taxation, as under the proposed constitution which has nothing of the kind. It would be quite as significant to declare that government ought to be free, that taxes ought not to be excessive, &c. as that the liberty of the press ought not to be restrained. . . .

1. Chapter XXXV of the New York constitution states: "And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this State, subject to such alterations and provisions as the legislature of this State shall, from time to time, make concerning the same. That such of the said acts, as are temporary, shall expire at the times limited for their duration, respectively. That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of Christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives claimed or exercised by, the King of Great Britain and his predecessors, over the colony of New York and its inhabitants, or are repugnant to this constitution, be, and they hereby are, abrogated and rejected. And this convention doth further ordain, that the resolves or resolutions of the congresses of the colony of New York, and of the convention of the State of New York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this State; subject, nevertheless, to such alterations and provisions as the legislature of this State may, from time to time, make concerning the same" (Thorpe, V, 2635–36).

2. Actually clause 2.

3. The italics were added by "Publius."

4. Blackstone, *Commentaries*, Book I, chapter 1, p. 136.

5. *Ibid.*, Book IV, chapter 23, p. 431. The small capitals were inserted by "Publius."

Publius: The Federalist 85
New York, 28 May 1788 (excerpt)

This essay, written by Alexander Hamilton, first appeared in Volume II of the book edition of *The Federalist*. It was reprinted as number 84 in the New York *Independent Journal*, 13, 16 August, and as number 85 in the *New York Packet*, 15 August. It has been transcribed from pages 357–65 of the book edition.

For the entire essay, see CC:766. For a general discussion of the authorship, circulation, and impact of *The Federalist*, see CC:201, 406, 639, and Editors' Note, 28 May (CC:Vol. 6, pp. 83–87).

. . . It is remarkable, that the resemblance of the plan of the convention to the act which organizes the government of this state holds, not less with regard to many of the supposed defects, than to the real excellencies of the former. Among the pretended defects, are the re-eligibility of the executive, the want of a council, the omission of a formal bill of rights, the omission of a provision respecting the liberty of the press: These and several others, which have been noted in the course of our inquiries, are as much chargeable on the existing constitution of this state, as on the one proposed for the Union. And a man must have slender pretensions to consistency, who can rail at the latter for imperfections which he finds no difficulty in excusing in the former. Nor indeed can there be a better proof of the insincerity and affectation of some of the zealous adversaries of the plan of the convention among us, who profess to be the devoted admirers of the government under which they live, than the fury with which they have attacked that plan, for matters in regard to which our own constitution is equally, or perhaps more vulnerable. . . .

An American
Pennsylvania Packet, 31 May 1788[1]

To the People of the United States.

Although discussions of the Federal Constitution, almost without number, have already taken place, one point of great magnitude admits of further observation— *The power of effecting amendments.*

It has been frequently asserted that amendments can be as easily effected *before* the adoption as *after*. Let us for a moment apply our cool and close attention to this point, and let us do it with all possible candor. To amend *before* the adoption will require that *all* the states, who are to become members of the new confederacy, should adopt *all* the amendments, that shall be adopted by *any one*. For example, if five amendments should be proposed by a new general convention, and

adopted by *one* state, *every* other state that should not adopt them all, would effectually reject the constitution: that is, *the consent of the whole thirteen will be necessary to obtain any one amendment, however salutary.* But to amend the constitution *after* its adoption will require the conventions or legislatures of *only three-fourths* of the states; that is *ten out of the whole thirteen.* Hence it clearly follows, that to obtain amendments *after* the ratification will be as much less difficult than to procure them before the ratification, *as ten is less than thirteen.* It has been urged, that the officers of the federal government will not part with power after they have got it, but those who make this remark really have not duly considered the constitution; for the new Congress will be *obliged* to call a federal convention, on the application of the legislatures of *two-thirds* of the states, and all amendments proposed by such federal conventions are to be *valid*, when adopted by the legislatures or conventions of *three fourths* of the states. It therefore clearly appears, that *two-thirds* of the states can procure a general convention, for the purpose of amending the constitution; and that *three fourths* of them can introduce those amendments into the constitution, although the President, Senate, and federal House of Representatives were *unanimously* opposed to *each* and *all* of them. *Congress therefore cannot hold any power which three-fourths of the states shall not approve on experience.*

1. Reprinted by 30 June (7): N.Y. (2), N.J. (1), Pa. (1), Va. (1), N.C. (1), S.C. (1). For a response, see New York *Hudson Weekly Gazette*, 17 June (RCS:N.Y., 1200–1202).

Biographical Gazetteer

The following sketches outline the political careers of those people in the first two Bill of Rights volumes who either wrote letters, newspaper essays, or pamphlets, or delivered speeches concerning amendments to the Constitution.

John Adams (1735–1826), a Braintree, Massachusetts, lawyer, served in the Continental Congress, 1774–77, signed the Declaration of Independence, and was the principal author of the Massachusetts constitution of 1780. From 1777 to 1788 he served almost continuously as a prominent American diplomat in Europe. Adams returned to America in June 1788, supported the Constitution, and was U.S. Vice President, 1789–97, and President, 1797–1801. He was also the author of the three-volume *A Defence of the Constitutions of the United States* (1787–88), which circulated widely in America.

Samuel Adams (1722–1803), a resident of Boston and a leader of the revolutionary movement against Great Britain, was a delegate to Congress, 1774–81, and signed the Declaration of Independence and Articles of Confederation. In the Massachusetts Convention, he voted to ratify the Constitution in February 1788, despite his earlier opposition to it. He served in the state Senate, 1781–85, 1786–88 (president, 1781–85, 1787–88). He was defeated as a candidate for the U.S. House of Representatives in 1788, but was subsequently elected lieutenant governor of Massachusetts, 1789–93, and governor, 1793–97.

Fisher Ames (1758–1808), a Dedham, Massachusetts, lawyer and graduate of Harvard College (1774), was the author of the five "Camillus" essays favoring a strong central government that were printed in the Boston *Independent Chronicle* in February and March 1787. In the Massachusetts Convention, he voted to ratify the Constitution in February 1788. He was a member of the state House of Representatives, 1788–89; the U.S. House of Representatives, 1789–97; and the state Council, 1799–1801.

Egbert Benson (1746–1833), a lawyer, was a Dutchess County, New York, assemblyman, 1777–81, 1787–88; attorney general, 1777–89; delegate to Congress, 1784, 1787–88; and commissioner to the Annapolis Convention, 1786. A strong supporter of the Constitution, he served in the U.S. House of Representatives in 1789–93, 1813. He also served as a justice of the state Supreme Court, 1794–1801, and was one of President John Adams's "midnight" judicial appointments, 1801.

Theodorick Bland (1742–1790), a Prince George County, Virginia, planter who practiced medicine before the Revolution, was a Continental Army officer, 1776–79; and a member of Congress, 1780–83, the state House of Delegates, 1786–89, and the U.S. House of Representatives, 1789–90. He voted against ratification of the Constitution in the state Convention in June 1788.

Elias Boudinot (1740–1821), an Essex County, New Jersey, lawyer, was a delegate to Congress, 1778, 1781–83 (president, 1782–83); a member of the U.S. House of Representatives, 1789–95; and the director of the U.S. Mint, 1795–1805.

JAMES BOWDOIN (1726–1790), a wealthy Boston merchant, was a prominent colonial and Revolutionary legislator. He served as president of the state constitutional convention, 1779–80, and as governor of Massachusetts, 1785–87. In the Massachusetts Convention, he voted to ratify the Constitution in February 1788.

HUGH HENRY BRACKENRIDGE (1748–1816), a Pittsburgh lawyer, was born in Scotland and came to Pennsylvania in 1753. He represented Westmoreland County in the Pennsylvania Assembly, 1786–87, where he advocated the free navigation of the Mississippi River and the calling of a convention to ratify the Constitution. In 1787 and 1788 he published several essays and poems supporting the Constitution. He also served as a justice of the state Supreme Court, 1799–1806.

GEORGE BRYAN (1731–1791), a native of Ireland and Philadelphia merchant, was a delegate to the Stamp Act Congress, 1765; member Supreme Executive Council, 1776–79; and assemblyman, 1779–80, where he was the leading supporter of the 1780 act abolishing slavery. He served as a justice on the state Supreme Court, 1780–91, and on the Council of Censors, where he opposed revision of state constitution in 1784. He supported revocation of Bank of North America charter in 1785 and opposed ratification of Constitution. He was believed to be author of the "Centinel" essays and was a delegate to the Harrisburg Convention, 1788.

SAMUEL BRYAN (1759–1821) was born in Philadelphia, the eldest son of George Bryan. He served as secretary of the Council of Censors, 1784; clerk of the Pennsylvania Assembly, 1784–86; and state register general, 1795–1801. He was the author of the "Centinel" essays and the Dissent of the Minority of the Pennsylvania Convention.

AEDANUS BURKE (1743–1802), a native of Ireland and a Charleston, South Carolina, lawyer, was an associate judge of the state Court of General Sessions and Common Pleas, 1778–80, 1783–99. He was a member of the state House of Representatives, 1779–88; the U.S. House of Representatives, 1789–91; and chancellor of the state Court of Equity, 1799–1802. In the state Convention, he voted against ratification of the Constitution in May 1788. In 1783 he published a pamphlet denouncing the Society of the Cincinnati.

EDWARD CARRINGTON (1749–1810), a Virginia planter, was a lieutenant colonel in the Continental Army, 1776–83, serving as state superintendent and director for repair of arms, 1780–81; continental deputy quartermaster general and chief of artillery for the Southern Department, 1781–83. In the House of Delegates, he represented Cumberland County in 1784–86 and Powhatan County in 1788–90. He was a delegate to Congress, 1786–88; U.S. marshal for Virginia, 1789–95; federal supervisor for collection of excise taxes on liquors in Virginia, 1791–95; recorder of Richmond, 1805; and mayor of Richmond, 1806, 1809.

DANIEL CARROLL (1730–1796), a Montgomery County, Maryland, planter and merchant, was a member of the state Executive Council, 1777–81; state senator, 1781–90 (multiple sessions or parts of sessions as president); and a delegate to Congress, 1781–83, and the Constitutional Convention, 1787, where he signed the Constitution. He was a U.S. representative, 1789–91, and a member of the Board of Commissioners of the District of Columbia, 1791–95.

THOMAS CHITTENDEN (1730–1797) was born in East Guilford, Conn. In 1749 he moved to Salisbury, Conn., where he was a farmer and served as justice of the peace, militia

colonel, and member of the colonial assembly, 1765–72. He moved to Williston, Vermont, in 1774, where he was involved in land speculation. In 1777, he served in both the provincial convention that drafted the declaration of independence for the New Hampshire Grants and the convention that drafted Vermont's first constitution, as well as serving as president of the council of safety. In 1778 he was elected governor, a position he was reelected to by popular vote (except for 1789–90) until 1797 when he resigned shortly before his death. He was president of the Vermont Convention in which he voted to ratify the Constitution in January 1791.

JOSHUA CLAYTON (1744–1798), a physician, lived on a farm in New Castle, Delaware. He served as a colonel and surgeon in the Continental Army, 1777, and in the state legislature for several terms between 1781 and 1788. He was state treasurer, 1789–93, state president, 1789–93, and the first governor under the new state constitution, 1793–96. He was briefly a U.S. senator in 1798 before dying of yellow fever.

GEORGE CLINTON (1739–1812), an Ulster County, New York, lawyer, was a brigadier general in the state militia, 1775–77; a member of Congress, 1775–76; and a brigadier general in the Continental Army, 1777–83. He served as New York governor, 1777–95, 1801–4, and, as such, was the leader of a powerful, well-organized political machine. As president of the New York Convention in June and July 1788, he strongly supported amendments to the Constitution, but did not cast a ballot on the final question. He was Vice President of the United States, 1805 until his death in 1812.

GEORGE CLYMER (1739–1813), a Philadelphia merchant, was a member of Congress, 1776–77, 1780–82, and signed the Declaration of Independence. He was an assemblyman, 1776–79, 1785–89, and in September 1787 he was a leader in the fight to have the Assembly call a state convention to consider the Constitution. As a delegate to the Constitutional Convention, he signed the Constitution. He was a U.S. representative, 1789–91, and a federal collector of excise in Pennsylvania, 1791–94.

THOMAS COGSWELL (1746–1810), a native of Massachusetts, rose to the rank of lieutenant colonel during the Revolutionary War and served as Wagon-master General. After the war, Cogswell settled in Gilmanton, New Hampshire. In 1784 Cogswell was appointed chief justice of the New Hampshire court of common pleas serving until his death in 1810. He wrote several Antifederalist essays under the pseudonyms "A Farmer," "A Friend to the Republic," and "The Anti-fœderalist."

TENCH COXE (1755–1824), a Philadelphia merchant, had British sympathies early during the war. He represented Pennsylvania in the Annapolis Convention, 1786. After the Constitutional Convention, he became one of the most prolific Federalist writers. He was assistant secretary of the U.S. Treasury, 1789–92, and commissioner of revenue, 1792–97. He was secretary of the Pennsylvania Society for Promoting the Abolition of Slavery, 1780s.

WILLIAM CUSHING (1732–1810), a lawyer, was born in Scituate, Massachusetts. He moved to Pownalborough, Maine, in 1760, and became justice of the peace in Lincoln County. He also served as justice of the Superior Court of Judicature and then of the state Supreme Judicial Court, 1772–89 (Chief Justice, 1777–89). He presided over the Quock Walker cases ruling that slavery was unconstitutional in Massachusetts. He was a member of the state constitutional convention, 1779–80. He was vice president of the Massachu-

setts Convention, where he voted to ratify the Constitution in February 1788. He served as an associate justice of the U.S. Supreme Court from 1789 until his death (serving as acting Chief Justice in 1794–95 when John Jay was on a diplomatic assignment in England). In 1795, President Washington nominated him as Chief Justice and the Senate confirmed him, but he declined due to poor health.

NATHAN DANE (1752–1835), a Harvard College graduate (1778) and Beverly, Massachusetts, lawyer, was a member of the state House of Representatives, 1782–86, and state Senate, 1793–99. He was a delegate to Congress, 1785–88, where he was the primary author of the Northwest Ordinance (1787). He was an unsuccessful candidate for the U.S. Senate in 1788.

THOMAS DAWES, JR. (1758–1825), a lawyer, represented Boston in the state House of Representatives, 1787–89. In the state Convention he voted to ratify the Constitution in February 1788. He was a judge of probate for Suffolk County, 1790–92, 1823–25; a justice of the state Supreme Judicial Court, 1792–1802; and a judge of the municipal court of Boston, 1802–22.

JOHN DICKINSON (1732–1808), a Wilmington, Delaware, lawyer, served in the Pennsylvania Assembly in the 1760s and 1770s. He was a Pennsylvania delegate to the Stamp Act Congress, 1765, and the Continental Congress, 1774–76, where he voted against the resolution declaring independence and was absent when the Declaration of Independence was adopted. He was a Delaware delegate to Congress, 1779 (signed Articles of Confederation), and president of Delaware, 1781–82. He represented Delaware in the Annapolis Convention, 1786, and the Constitutional Convention, 1787 (George Read signed the Constitution for him). He was the author of "Fabius" letters supporting the Constitution, 1788, and the president of the Delaware constitutional convention, 1792.

OLIVER ELLSWORTH (1745–1807), a lawyer, was born in Windsor, Connecticut. He was a member of Congress, 1778–83, and a delegate to the Constitutional Convention, 1787. In support of the Constitution, he published thirteen essays signed "Landholder" from 5 November 1787 to 24 March 1788. In the state Convention, he voted to ratify the Constitution in January 1788. He served as a U.S. senator, 1789–96; Chief Justice of the United States, 1796–1800; and a peace commissioner to France, 1799–1800.

JOSEPH FAY (1753–1803), a Bennington, Vermont, farmer and postmaster, was secretary to the Vermont Council of Safety, 1777–78, and Council of State, 1778–84. He was a militia colonel at the Battle of Bennington, 1777. He supported Vermont independence from New York. In 1794 he moved to New York City, where he engaged in trade and land speculation.

ARTHUR FENNER, JR. (1745–1805), a Providence, Rhode Island, merchant, was clerk of the Providence County Court of Common Pleas, 1769–89; lieutenant, then captain, in the Continental Army, 1775–77; and governor, 1790–1805.

THOMAS FITZSIMONS (1741–1811), a wealthy merchant, came to Philadelphia from Ireland in 1761. He was one of the founders of the Bank of North America in 1781 and a director of the bank, 1781–1803. He served in the Confederation Congress, 1782–83, and on the Council of Censors, 1783–84, where he supported the revision of state constitution. He was in the state Assembly, 1785–89; a delegate to the Constitutional Con-

vention, where he signed the Constitution; and a member of the U.S. House of Representatives, 1789–95.

THEODORE FOSTER (1752–1828), a Providence, Rhode Island, lawyer, merchant, and historian, was a justice of the peace, 1773–86, 1789–90; town clerk, 1775–87; General Assembly deputy, 1776–77, 1778–80, 1781–82; and General Assembly assistant, 1787–88. He was a U.S. senator, 1790–1803; a member of the Providence Abolition Society; and a trustee of Rhode Island College (Brown University), 1794–1822.

BENJAMIN FRANKLIN (1706–1790), a Philadelphia writer, printer, scientist, inventor, politician, and diplomat, was American minister plenipotentiary to France, 1778–84, and president of the Pennsylvania Supreme Executive Council, 1785–88. As a delegate to the Constitutional Convention, 1787, he signed the Constitution and delivered a conciliatory address at close of the Convention which was widely published by Federalists in late 1787 and early 1788. He was nominated for the state Convention by the Constitutionalists but was not elected. His last public act was to sign a petition to Congress encouraging the abolition of slavery in 1790. He was president of the Pennsylvania Society for Promoting the Abolition of Slavery, 1780s.

ELBRIDGE GERRY (1744–1814), a Marblehead, Massachusetts, merchant, was a member of the colonial House of Representatives, 1772–74; a delegate to Congress, 1776–80, 1783–85 (was elected 1780–81 but refused to serve) and signed the Declaration of Independence and the Articles of Confederation; member and often president of the congressional Treasury Board, 1776–79. He served in the state House of Representatives, 1776–77, 1780–81, 1786–87. He moved to Cambridge, Massachusetts, 1786. He was elected to the Annapolis Convention but resigned, 1786. As a delegate to the Constitutional Convention, he refused to sign the Constitution, 1787. He was a U.S. representative, 1789–93; Presidential elector, 1796, 1804; and diplomatic envoy to France in the XYZ Affair, 1797–98. He was an unsuccessful candidate for governor, 1800–1803; but served as governor, 1810–12 (defeated for re-election), and as U.S. Vice President, 1813–14.

BENJAMIN GOODHUE (1748–1814), a Salem, Massachusetts, merchant, served in the state constitutional convention, 1779–80; state House of Representatives, 1780–82; state Senate, 1783–84, 1785–89; U.S. House of Representatives, 1789–96; and U.S. Senate, 1796–1800.

CHRISTOPHER GORE (1758–1827), a Boston lawyer, served as a delegate in the state Convention, where he voted to ratify the Constitution in February 1788. He was a member of the state House of Representatives, 1788–90, 1808–9, and U.S. attorney for the district of Massachusetts, 1789–96. He served as U.S. commissioner to England to settle claims under the Jay Treaty, 1796–1804, and as *charge d'affaires* in London, 1803–4. He also was a state senator, 1806–8; governor, 1809–10; and U.S. senator, 1813–16.

NATHANIEL GORHAM (1738–1796), a Charlestown, Massachusetts, merchant, was a member, of the colonial House of Representatives, 1771–74; first two provincial congresses, 1774–75; state Board of War, 1778–81; state constitutional convention, 1779–80; state House of Representatives, 1778–80, 1781–88 (Speaker, 1781–83, 1785–86); and state Senate, 1780–81, 1790–91. He was a delegate to Congress, 1782–83, 1785–87, 1789 (president, 1786–87); and was on the Governor's Council, 1788–90. As a member of the

Constitutional Convention, he was chairman of Committee of the Whole and signed the Constitution. In the state Convention he voted to ratify the Constitution in February 1788. With Oliver Phelps he purchased 6,000,000 acres of land in western New York owned by Massachusetts in 1788, but his inability to make payments led to his bankruptcy. He served as supervisor of revenue for District of Massachusetts, 1791–96.

WILLIAM GRAYSON (c. 1736–1790), a lawyer in Prince William County, Virginia, served as an officer during the American Revolution, 1776–79 (aide-de-camp to George Washington, 1776) and was a commissioner on the Virginia Board of War, 1779–81. He served in the Virginia House of Delegates, 1784–85, 1788, and in Congress, 1785–87. In the state Convention, he voted against the ratification of the Constitution in June 1788. He was a U.S. senator, 1789–90.

ALEXANDER HAMILTON (1757–1804), born in Nevis, Leeward Islands, British West Indies, came to America in 1772. He wrote pamphlets and newspaper essays favoring independence, 1774–75. New York's second provincial congress commissioned him a captain to command an artillery company, 1776. He served as an aide-de-camp to General George Washington with the rank of lieutenant colonel, 1777–81. After resigning from the army in 1781, he studied law in Albany and was admitted to the bar in 1782 and opened an office in New York City in 1783. He was a member of Congress, 1782–83, 1788. He was a co-founder of the Bank of New York, 1784. As a commissioner to the Annapolis Convention, he drafted the Convention's report, 1786. He was elected to the Constitutional Convention, left and returned twice, and was the only New York delegate to sign the Constitution, 1787. He actively campaigned in the ratification debate writing several pieces including co-authoring "The Federalist" essays, 1787–88. In the state Convention, he voted to ratify the Constitution in July 1788. He became the first U.S. Secretary of the Treasury, 1789–95. After resigning, he returned to practice law in New York City where he remained active in politics as the titular leader of the Federalists. He drafted President Washington's Farewell Address, 1796, and was commissioned a major general (second in command) of the Provisional Army in 1798. He was killed in a duel by Vice President Aaron Burr, 1804.

JOHN HANCOCK (1737–1793), a wealthy Boston merchant, was a delegate to Congress, 1775–78 (president, 1775–77), and signed the Declaration of Independence and the Articles of Confederation. He was governor of Massachusetts, 1780–85, 1787–93. As president of the state Convention, he voted to ratify the Constitution with recommendatory amendments, which he introduced in February 1788.

ALEXANDER CONTEE HANSON (1749–1806), an Annapolis, Maryland, lawyer, was assistant private secretary to George Washington in 1776. He was a judge of the Maryland General Court, 1778–89, and chancellor and judge, state Land Office, 1789–1806. Under the pseudonym "Aristides" his pamphlet strongly supported the ratification of the Constitution in January 1788. In the state Convention, he voted to ratify the Constitution in April 1788.

THOMAS HARTLEY (1748–1800), a York, Pennsylvania, lawyer, was a lieutenant colonel in the Continental Army. He served in the Assembly, 1779–80; Council of Censors, 1783–84; and the U.S. House of Representatives, 1789–1800. In the state Convention, he voted to ratify the Constitution in December 1787.

WILLIAM HEATH (1737–1814), a Roxbury, Massachusetts, farmer, represented that town in the state House of Representatives, 1770–74, and the First and Second Provincial congresses, 1774–75. During the Revolution he was a major-general in both the Massachusetts militia and the Continental Army. Heath served in the state Senate, 1784–85, 1791–93, 1793–94. He voted to ratify the Constitution in the state Convention in February 1788. He was judge of probate for Norfolk County, 1793–1814.

JEREMIAH HILL (1747–1820), a Biddeford, Maine, merchant, had been a captain in the Continental Army during the war. He was town clerk, a justice of the peace, and a delegate to the state House of Representatives. In 1789 he was appointed U.S. collector of customs for the Biddeford and Pepperellborough District of Maine.

ABRAHAM HOLMES (1754–1839), a native of Rochester, Massachusetts, represented that town in the state House of Representatives, 1787–91 (where he sympathized with the Shaysites) and 1797–98. In the state Convention, he voted against ratification of the Constitution in February 1788.

FRANCIS HOPKINSON (1737–1791), was a Philadelphia lawyer, poet, musician, and composer. He represented New Jersey in the Second Continental Congress, 1776, and signed the Declaration of Independence. In 1787 and 1788 he was an active Federalist propagandist. He served as U.S. district judge for Pennsylvania from 1789 until his death.

JOHN EAGER HOWARD (1752–1827), a planter and large landowner, was a resident and major developer of the town of Baltimore. He was an officer in the Continental Army, 1776–83, rising to the rank of lieutenant colonel. Howard served in Congress for a little more than a month in 1788. He was governor, 1788–91; a state senator, 1791–95; and U.S. senator, 1796–1803.

BENJAMIN HUNTINGTON (1736–1800), a Norwich, Connecticut, lawyer, served in the state House of Representatives, 1771–80 (Speaker, 1778–79), and the state Council, 1781–92 (but not 1790). He served in Congress, 1780–84, 1788, and the U.S. House of Representatives, 1789–91. He was mayor of Norwich, 1784–96, and a state Superior Court judge, 1793–97.

JAMES IREDELL (1751–1799), an Edenton, North Carolina, lawyer, was born in England and moved to America in 1768. He was the state attorney general, 1779–81, and president of the Council of State, 1788–89. Under the pseudonym "Marcus," Iredell published five installments in the *Norfolk and Portsmouth Journal* criticizing George Mason's objections to the Constitution. In the Hillsborough Convention, he led the unsuccessful effort to ratify the Constitution in July and August 1788. Iredell was an associate justice of the U.S. Supreme Court, 1790–99.

JAMES JACKSON (1757–1806), a Savannah, Georgia, lawyer, was born in Devonshire, England, and immigrated to Georgia in 1772. He was a state militia colonel in 1784, brigadier general in 1786, and major general in 1792. In 1788 he was elected governor but declined to serve. He was elected to the U.S. House of Representatives in 1789 but was defeated for re-election in a disputed election in 1791. He served in the U.S. Senate, 1793–95, 1801–6; and the state constitutional convention in 1798. He was governor from 1798–1801.

CHARLES JARVIS (1748–1807), a graduate of Harvard College (1766), a member of the state constitutional convention (1779–80), and a prominent physician, represented Boston in the state House of Representatives, 1787–96. He voted to ratify the Constitution in the state Convention in February 1788.

JOHN JAY (1745–1829), was a New York lawyer, diplomat, and jurist. He was the primary author of the New York constitution of 1777 and was New York's first chief justice, 1777–79. He served in the Continental and Confederation congresses, 1774–76, 1778–79, 1784 (president, 1778–79). He was U.S. minister to Spain 1779–82; a peace commissioner, 1782–83; and Confederation Secretary for Foreign Affairs, 1784–90. He was one of the leading Federalists in New York where he co-authored *The Federalist*, 1787–88, and wrote a very important pamphlet signed "A Citizen of New-York" in April 1788. In the state Convention, he voted to ratify the Constitution in July 1788. He served as Chief Justice of the U.S., 1789–95; diplomatic envoy to Great Britain, 1794–95; and governor, 1795–1801.

THOMAS JEFFERSON (1743–1826), was an Albemarle County, Virginia, planter and lawyer. He served in the House of Burgesses, 1769–75, and the House of Delegates, 1776–79, 1782–83. He was as a delegate to Congress, 1775–76, 1783–84, and was the author of the Declaration of Independence. Jefferson was governor of Virginia, 1779–81, and U.S. minister to France, 1785–89. He served as U.S. Secretary of State, 1790–93; U.S. Vice President, 1797–1801; and U.S. President, 1801–9. He founded the University of Virginia, 1819, and was its rector, 1819–26.

CHARLES JOHNSON (d. 1802), a Chowan County, North Carolina, planter, was often a member of the state Senate, where he served as Speaker in 1789. In December 1787 he was appointed to the North Carolina Council of State and served until his resignation in August 1788. Johnson was a member of the Hillsborough Convention, 1788, and vice president of the Fayetteville Convention, 1789, where he voted to ratify the Constitution.

WILLIAM SAMUEL JOHNSON (1727–1819), a Stratford, Connecticut, lawyer, was a delegate to the Stamp Act Congress, 1765; a member of the colonial and state Council, 1766–76, 1786–89. Because he was opposed to independence, he was defeated for re-election to the Council in 1776. After refusing to take an oath of allegiance to Connecticut, he was forced to give up his law practice in 1777, was arrested on suspicion of communicating with the enemy, but released upon taking the oath of loyalty in 1779. He was a delegate to Congress, 1784–87, and the Constitutional Convention, where he was chairman of the Committee of Style and signed the Constitution. He served as president of Columbia College, 1787–1800; was a delegate to the state Convention, where he voted to ratify the Constitution in January 1788; and was a U.S. senator from Connecticut, 1789–91.

RUFUS KING (1755–1827), a lawyer, studied law with Theophilus Parsons in Newburyport, Massachusetts; was admitted to the bar in Essex County, 1780. He served in the state House of Representatives, 1784–86; Congress, 1784–87; and the Constitutional Convention, where he signed the Constitution in 1787. In the state Convention he voted to ratify the Constitution in February 1788. He abandoned his law practice and moved to New York City in 1788. He served in the U.S. Senate, 1789–96, 1813–25; and as U.S. Minister to Great Britain, 1796–1803, 1825–26. He was the Federalist candidate for Vice President, 1804, 1808, and for President, 1816.

HENRY KNOX (1750–1806), a Boston bookshop clerk/owner, served in the Continental Army rising to rank of major general, 1775–83. He was commander of Washington's artillery; commander of West Point, 1782–83; and commander-in-chief of the Continental Army, 1783–84. He organized the national Society of the Cincinnati, 1783, and served as its secretary-general, 1783–99. He was the Confederation Secretary at War, 1785–89; and U.S. Secretary of War, 1789–94. He retired to Thomaston, Maine, where he was involved in lumbering, ship-building, live-stock raising, brick-making, and land speculation.

MARQUIS DE LAFAYETTE (1757–1834), was born into a wealthy land-owning family in Chavaniac, France. He was a major general in the Continental Army serving under George Washington from 1777 to 1781. After the Revolutionary War, he became one of France's leading reformers and worked for improved commercial relations between the United States and France.

JOHN LAMB (1735–1800), a New York City wine merchant, led the New York Sons of Liberty in 1765 and continued actively to oppose British policy for the next decade. As an officer during the Revolutionary War, he was wounded and briefly held prisoner by the British. He was a member of the state Assembly, 1784, and state collector of customs for the Port of New York, 1784–89. He actively opposed the Constitution and was the chairman of the New York Federal Republican Committee in 1788. He served as U.S. collector of the Port of New York, 1789–97.

JOHN LAURANCE (1750–1810), a native of England, was a New York City lawyer and served as judge advocate general in the Continental Army, 1777–82. He was a delegate to Congress, 1785–87; a state senator, 1788–89; a U.S. representative, 1789–93; a judge of the U.S. District Court for New York, 1794–96; and a U.S. senator, 1796–1800.

ELISHA LAWRENCE (c. 1746–1799) of Monmouth County, New Jersey, was a militia brigadier general and quartermaster during the Revolutionary War. He was a member of the state legislative council from Monmouth County, New Jersey, 1780–84, 1789–93, 1795–96, serving as vice president, 1789–93. He was acting governor for three months in 1790.

TOBIAS LEAR (1762–1816), a native of New Hampshire and graduate of Harvard College (1783), was George Washington's private secretary, 1786–93. He read law while being employed by Washington.

ARTHUR LEE (1740–1792), was a Virginia lawyer, a former physician, and a prolific pamphleteer who supported American independence. As a diplomat in France in 1778, he signed the treaties of alliance and amity and commerce with France. He also served in the Virginia House of Delegates, 1781–84; in Congress, 1782–84; and on the three-member Confederation Board of Treasury, 1785–89. Lee wrote Antifederalist essays under the pseudonym "Cincinnatus."

HENRY LEE ("Light Horse Harry") (1756–1818), was a Virginia planter and an officer in the Virginia militia and Continental Army, rising to the rank of lieutenant colonel. He represented Westmoreland County in the House of Delegates, 1785–86, 1789–91, 1795–99, and in the state Convention where he voted to ratify the Constitution in June 1788. He was a delegate to Congress, 1786–88, and was governor, 1791–94. He commanded the troops to suppress the Whiskey Rebellion, 1794, and was commissioned a major general in the U.S. Provisional Army, 1798–1800. He was a U.S. representative, 1799–1801.

RICHARD BLAND LEE (1761–1827), a Fairfax County, Virginia, lawyer/planter, served in the House of Delegates, 1784–88, 1796, 1799–1806, and in the U.S. House of Representatives, 1789–93. He was U.S. Attorney General, 1795–1801.

RICHARD HENRY LEE (1732–1794), a planter, represented Westmoreland County in the Virginia House of Delegates, 1777–78, 1780–81 (Speaker 1781), 1782–85. A delegate to Congress, 1774–79, 1784–85 (President), 1787, Lee signed the Declaration of Independence and the Articles of Confederation. He declined appointment to the Constitutional Convention. His amendments to the Constitution were rejected by the Confederation Congress in September 1787. In 1789 he was elected a U.S. senator, serving until 1792.

SILAS LEE (1760–1814) read law with George Thatcher and lived with Thatcher's family in Biddeford, Maine. Lee married Thatcher's niece Temperance Hedge, who also lived with that family. About 1789, Lee moved to Pownalborough, Maine. He served in the Massachusetts House of Representatives, 1794, 1797–99, and the U.S. House of Representatives, 1799–1801. In 1801 President Thomas Jefferson appointed Lee, a Federalist, to be U.S. Attorney for the District of Maine, a position Lee held until his death.

JAMES LINCOLN (d. 1791) was a planter from Ninety Six District, South Carolina. He served in the state House of Representatives, 1787–90, and was a county court judge. In the state Convention he voted against ratification of the Constitution in May 1788.

SAMUEL LIVERMORE (1732–1803), a lawyer and land and mill owner (owned over half of the town of Holderness, New Hampshire), was state attorney general, 1778–80; a member of the state House of Representatives, 1779–80; a delegate to the Congress, 1782, 1785–86; and chief justice of the state Supreme Court, 1782–90. He served in the state Convention where he voted to ratify the Constitution in June 1788. He served in the U.S. House of Representatives, 1789–93; the state constitutional convention, 1791; and the U.S. Senate, 1793–1801 (president pro tempore, 4th and 8th sessions).

THOMAS MCKEAN (1734–1817), a lawyer, represented Delaware in Congress, 1774–76, 1778–83. He signed the Declaration of Independence and served as president of Congress in 1781. He served as chief justice of the Pennsylvania Supreme Court, 1777–99, and governor of Pennsylvania from 1799–1808. In the Pennsylvania Convention, he was among the most active speakers and voted to ratify the Constitution in December 1787.

JAMES MADISON (1751–1836) was an Orange County, Virginia, planter. He was a member of the Virginia House of Delegates, 1776–77, 1784–87, 1799–1800; Virginia Council of State, 1778–79; and Congress, 1780–83, 1787–88. He attended the Annapolis Convention, 1786, and the Constitutional Convention the next year where he was a leading advocate for a powerful central government and signed the Constitution. Along with Alexander Hamilton and John Jay, he wrote *The Federalist*, 1787–88. In the Virginia Convention, he voted to ratify the Constitution in June 1788. He served as a U.S. representative, 1789–97; U.S. Secretary of State, 1801–9; and U.S. President, 1809–17.

ALEXANDER MARTIN (1740–1807), a native of New Jersey and a merchant and lawyer, was a 1756 graduate of the College of New Jersey (Princeton). He moved to Salisbury, N.C., soon after graduating. He was a lieutenant colonel and colonel in the North Carolina Second Continental Regiment, 1775–77. He sat in the state Senate, 1778–82, 1785, 1787–88, and was Speaker except for the sessions of 1778–79. He was governor, 1781–82

(acting), 1782–85, 1789–92. He was appointed to the Congress in 1786 but did not attend. He attended the Constitutional Convention in 1787 but left in August before the September signing of the Constitution. He served in the U.S. Senate, 1793–99.

LUTHER MARTIN (1748–1826), a lawyer, was born in New Jersey and educated at the College of New Jersey (Princeton). He moved to Baltimore, Maryland, c. 1771. He was Maryland attorney general, 1778–1805, 1818–22. He served in the Constitutional Convention but left two weeks early. His report to the Maryland legislature was printed in newspapers and as a pamphlet as his "Genuine Information." Other Antifederalist addresses by him were also printed in newspapers. In the state Convention, he voted against the ratification of the Constitution in April 1788. He served as counsel for the defense in the Samuel Chase impeachment trial, 1805, and in Aaron Burr's treason trial, 1807. In 1813 he became chief judge of the court of oyer and terminer for the City and County of Baltimore.

GEORGE MASON (1725–1792), a planter, lived at Gunston Hall near Alexandria, Virginia. He drafted the Virginia Declaration of Rights and parts of the state constitution of 1776, and was a member of the state House of Delegates, 1776–81, 1786–88. He was elected to Congress in 1777 but did not attend. Mason was one of the most frequent speakers in the Constitutional Convention, where he supported strengthening the central government, but insisted that the rights and liberties of the people be protected. He refused to sign the Constitution on 17 September 1787. His objections to the Constitution circulated in manuscript from September to November 1787 before they were printed in mid-November. In the state Convention, he voted against ratifying the Constitution in June 1788.

JAMES MERCER (1736–1793), a Spotsylvania County, Virginia, lawyer, was a member of the House of Burgesses, 1762–76; all five revolutionary conventions, 1774–76; and the House of Delegates, 1776–77. He served in Congress, 1779–80, and was a judge of the General Court, 1779–89, and the new Supreme Court of Appeals from November 1789 until his death.

JOHN FRANCIS MERCER (1759–1821), a lawyer-planter, was born at "Marlborough Point" in Stafford County, Virginia. He moved to "West River Farm," in Anne Arundel County, Maryland in 1785. Graduating from the College of William and Mary in 1775, he studied law with Thomas Jefferson, 1779, and at William and Mary, 1782–83. He served in the Continental Army, 1776–79, rising in rank to major, and was a lieutenant colonel in the Virginia militia, 1780–81. He was a member of Congress, 1783–84; and represented Anne Arundel County in the House of Delegates, 1788, 1791–92, 1800, 1803–5. He served in the Constitutional Convention but left early. In the state Convention, he voted against ratifying the Constitution in April 1788. He was a U.S. representative, 1792–94, and governor, 1801–3.

THOMAS MIFFLIN (1744–1800), a Philadelphia merchant, rose to the rank of major general in the Continental Army during the Revolutionary War. He was a delegate to Congress, 1774–76, 1782–84 (President, 1783–84); a member of the Assembly, 1778–79, 1785–88 (Speaker 1785–88); and a delegate to the Constitutional Convention, where he signed the Constitution in 1787. He was president of the state Supreme Executive Council, 1788–90, and president of the state constitutional convention, 1789–90. He served as governor, 1790–99.

GOUVERNEUR MORRIS (1752–1816), born on the family estate in then Westchester County, New York, was a lawyer. He represented New York in Congress, 1778–79, where he signed the Articles of Confederation. He moved to Pennsylvania in 1779, and served as assistant Superintendent of Finance, 1781–85. He represented Pennsylvania in the Constitutional Convention, where he was among the most frequent speakers. As a member of the Committee of Style, he wrote the final version of the Constitution, which he signed on 17 September 1787. He served as U.S. minister to France, 1792–94, and as a U.S. senator, 1800–1803.

SAMUEL NASSON (1745–1800), a Sanford, Maine, miller, trader, and farmer. During the Revolutionary War, he was a quartermaster, ensign, and captain in the Continental Army and state militia, 1775–78. He served as a town selectman, 1786–90, 1792–94, 1796–1800; town clerk, 1797–98, 1800; and justice of the peace, 1789–1800. He was a member of the Massachusetts House of Representatives, 1787–89, and state Convention, where he voted against ratification of the Constitution in February 1788.

GEORGE NICHOLAS (c. 1754–1799), a Virginia lawyer, served in the Continental Army, 1775–77. He was Virginia's acting attorney general, 1781–82. He served in the House of Delegates, 1778–79, 1781–82, 1783–84, 1786–88. In the state Convention, he voted to ratify the Constitution in June 1788. He moved to Kentucky in 1789 and was its attorney general, 1790–92. He served in the Kentucky constitutional convention, 1792. He was implicated in James Wilkinson's Spanish conspiracy. He was the first professor of law at Transylvania University.

SAMUEL OSGOOD (1748–1813), a native of Andover, Massachusetts, was an aide-de-camp to General Artemas Ward. Osgood resigned from the army in February 1776 after attaining the rank of colonel. He was a delegate to Congress, 1781–84. In 1785 he was appointed one of three commissioners on the Confederation Board of Treasury, a position he held until the board ceased to function in September 1789. President Washington appointed him Postmaster General in 1789, serving until his resignation in 1791. He served in the New York Assembly, 1801–2, and was elected first president of City Bank of New York, 1812.

WILLIAM PACA (1740–1799), a Harford County, Maryland, lawyer and planter, served in the colonial Assembly, 1768–70, 1771, 1773–74; five provisional conventions, 1774, 1775–76; House of Delegates, 1786–87; Congress, 1774–78 (signed the Declaration of Independence, 1776); and state Senate, 1777, 1779–80. He served as a judge on the U.S. Court of Appeals for Admiralty and Prize Cases, 1780; governor, 1782–85; and on the Executive Council, 1786. In the state Convention, he proposed amendments to the Constitution but voted for ratification in April 1788. He was the federal district judge for Maryland, 1789–99.

JOHN PAGE (1743–1808), a Gloucester County, Virginia, planter, served in the House of Delegates, 1781–84, 1785–87, 1788–89. He was a member of the Council of State and lieutenant governor, 1776–80. He was a U.S. representative, 1789–97; governor, 1802–5; and U.S. commissioner of loans for Virginia, 1805–8.

THEOPHILUS PARSONS (1750–1813), a Newburyport, Massachusetts, lawyer, was a member of the state constitutional convention, 1779–80; and the state House of Representatives, 1779–80, 1787–92. In the state Convention, he was instrumental in persuading John Hancock to propose recommendatory amendments to the Constitution and voted to

ratify the Constitution in February 1788. He served as chief justice of the state Supreme Judicial Court from 1806 until his death.

GEORGE PARTRIDGE (1740–1828), a graduate of Harvard College and resident of Duxbury, Massachusetts, had taught school and studied theology. He was a member of the state House of Representatives, 1775–79; Congress, 1779–82, 1783–85; and the state Convention, where he voted to ratify the Constitution in February 1788. He served in the U.S. House of Representatives, 1789–90, and as sheriff of Plymouth County, 1777–1812 (except for one year).

RICHARD PETERS (1744–1828), a Philadelphia lawyer, was secretary to the Continental Board of War, 1776; member of the Board of War, 1777–81; member of Congress, 1782–83; state Assembly, 1787–90 (Speaker, 1788–90); and U.S. district judge for Pennsylvania, 1792–1828.

WILLIAM PIERCE (c. 1740–1789), a native of Virginia and a Savannah, Georgia, merchant, was a Continental Army officer, 1776–83, serving for a time as General Nathanael Greene's aide-de-camp. In 1786, he represented Chatham County in the Assembly, and in 1787 served in Congress and in the Constitutional Convention, where he favored strengthening the central government, but left early. He wrote sketches of the Convention delegates and notes of debates. He delivered the Fourth of July oration in Savannah in 1788.

CHARLES PINCKNEY (1757–1824), a Christ Church Parish, South Carolina, lawyer and planter, served as an officer in the South Carolina militia during the Revolutionary War and was held on a British prison ship in Charleston harbor, 1781. He was a member of the state House of Representatives, 1779–80, 1784, 1787–89, 1792–96, 1806, 1810–13, and Congress, 1784–87. Pinckney was a delegate to the Constitutional Convention in 1787 and signed the Constitution. In the state Convention, he voted to ratify the Constitution in May 1788. He served as governor, 1789–92, 1796–98, 1806–8; U.S. senator, 1799–1801; U.S. representatives, 1819–21; and U.S. minister to Spain, 1801–5.

CHARLES COTESWORTH PINCKNEY (1746–1825), a Charleston, South Carolina, lawyer and planter, served in the Continental Army, 1776–83, and was brevetted a brigadier general. He served in the state House of Representatives, 1776–80, 1783–90, and state Senate, 1791–95, 1800–1804. As a delegate to the Constitutional Convention, he signed the Constitution in September 1787. In the state Convention he voted to ratify the Constitution in May 1788. He was a diplomatic envoy to France in the XYZ Affair, 1797–98. He served as major general of the U.S. Provisional Army, 1798–1800. He was a defeated candidate for U.S. Vice President in 1800, and for U.S. President in 1804 and 1808.

DAVID RAMSAY (1749–1815), a physician and historian, was born in Lancaster County, Pennsylvania. Upon completion of his medical studies in Philadelphia, he moved to Charleston, South Carolina. He served as a delegate to Congress, 1782–83, 1785–86; member in the South Carolina House of Representatives, 1776–90; and state Senate, 1791–97 (President, 1791–97). In the state Convention, he voted to ratify the Constitution in May 1788. He wrote several essays under the pseudonym "Civis," and was the author of several histories of the American Revolution, South Carolina, and the United States.

BEVERLEY RANDOLPH (1754–1797), a Cumberland County, Virginia, planter, was a member of the House of Delegates, 1777–78, 1779–81, and Council of State, 1781–88. During

the last six years, he served as president of the Council and thus was lieutenant governor when the governor was absent. He became governor in December 1788, serving until 1791.

EDMUND RANDOLPH (1753–1813), a Williamsburg lawyer, was attorney general of Virginia, 1776–86, a delegate to Congress, 1779, 1781–82; governor, 1786–88; commissioner to the Annapolis Convention, 1786; and delegate to the Constitutional Convention, where he refused to sign the Constitution in 1787. In December 1787, he published his reasons for not signing the Constitution in the form of a letter to the Speaker of the Virginia House of Delegates. In the state Convention, he voted to ratify the Constitution in June 1788. He was U.S. Attorney General, 1789–94, and U.S. Secretary of State, 1794–95.

BENJAMIN RUSH (1745–1813), a Philadelphia physician, was a prolific writer on medical subjects, social reforms, and state and national politics. As a member of the Second Continental Congress, he signed the Declaration of Independence, 1776. As a member of the state constitutional convention, 1776, he opposed the democratic state constitution and advocated its revision and the establishment of a strong central government. In the state Convention, he voted to ratify the Constitution in December 1787 and continued to write in its support. Rush became a Democratic-Republican and served as Treasurer of the U.S. Mint, 1797–1813.

THOMAS SCOTT (1739–1796) served as a Westmoreland County, Pennsylvania, justice of the peace, 1774; assemblyman, 1776; and councilor, 1777–80. He was prothonotary of Washington County, Pennsylvania, 1781–89, and represented that county in the state House of Representatives, 1791. In the state Convention, he voted to ratify the Constitution in 1787. He was a U.S. representative, 1789–91, 1793–95.

THEODORE SEDGWICK (1746–1813) was a Stockbridge, Massachusetts, lawyer. He served in the Massachusetts House of Representatives, 1780, 1782–84, 1787–89 (Speaker, 1788–89); state Senate, 1784–86; and Congress, 1785–86, 1788. In the state Convention, he voted to ratify the Constitution in February 1788. He was a U.S. representative, 1789–96, 1799–1801 (Speaker); a U.S. senator, 1796–99; and an associate justice of the state Supreme Court, 1802–13.

JOSHUA SENEY (1756–1798), a Queen Anne's County, Maryland, farmer and lawyer, was appointed sheriff in 1779. He served in the Maryland House of Delegates, 1785–87; Congress, 1788; the U.S. House of Representatives, 1789–92; and as chief justice of the state Third Judicial District, 1792–96. He was again elected to the U.S. House of Representatives in 1798 but died before taking office.

ROGER SHERMAN (1721–1793), a New Haven, Connecticut, lawyer, was a judge of the state Superior Court, 1776–89. He was a delegate to Congress, 1774–81, 1783–84, and signed the Declaration of Independence and the Articles of Confederation. He served as mayor of New Haven from 1784 until his death. He was a delegate to the Constitutional Convention where he signed the Constitution, 1787. He wrote Federalist essays signed "A Countryman" and "A Citizen of New Haven," 1787–88. In the state Convention, he voted to ratify the Constitution in January 1788. Sherman was a U.S. representative, 1789–91, and a U.S. senator, 1791–93.

PETER SILVESTER (1734–1808), a Kinderhook, New York, lawyer, represented Albany County in the First and Second Provincial congresses, 1775–76, and Columbia County in the state Assembly, 1788, 1803, 1804–6. He was a state senator, 1796–97, 1798–1800; and a U.S. representatives, 1789–93.

THOMAS SINNICKSON (1744–1817), a Salem, New Jersey, merchant, was an assemblyman, 1777, 1782, 1784–85, 1787–88, and a U.S. representative, 1789–91, 1797–99.

JOHN SMILIE (1742–1813), born in northern Ireland, immigrated to Lancaster County, Pennsylvania, 1760, and in 1781 to Fayette County. He served in the Assembly, 1778–80, 1784–86, and in the Supreme Executive Council, 1786–89. In the state Convention he voted against ratification of the Constitution in December 1787, and was a signer of "The Dissent of the Minority of the Pennsylvania Convention." He served in the Pennsylvania constitutional convention, 1789–90; state Senate, 1790–92; state House of Representatives, 1795–98; and the U.S. House of Representatives, 1793–95, 1799–1813.

MELANCTON SMITH (1744–1798), a wealthy Dutchess County, New York, merchant-lawyer, moved to New York City about 1785. He served in Congress, 1785–87. He probably wrote the sixteen Antifederalist essays by "Brutus" and a pamphlet signed "A Plebeian." He represented Dutchess County in the state Convention, where, as the self-proclaimed manager, and despite being an Antifederalist, he voted to ratify the Constitution with recommendatory amendments in July 1788. He served in the Assembly in 1792.

WILLIAM LOUGHTON SMITH (1758–1812), a Charleston, South Carolina, lawyer, was a member of the state House of Representatives, 1785–89, and the U.S. House of Representatives, 1789–97. In the state Convention, he voted to ratify the Constitution in May 1788. He was U.S. minister to Portugal and Spain, 1797–1801.

JOSEPH SPENCER was perhaps the Joseph Spencer (d. 1829) who served as a captain in the Continental Army, 1776–77, and represented Orange County in the Virginia House of Delegates, 1780–81. He was perhaps the same Joseph Spencer who was imprisoned in Orange County in 1773 for preaching and teaching as a Baptist without a license.

MICHAEL JENIFER STONE (1747–1812), a Charles County, Maryland, planter, served in the state House of Delegates, 1781–83. In the state Convention, he voted to ratify the Constitution in April 1788. He was a U.S. representative, 1789–91.

ARCHIBALD STUART (1757–1832), a Staunton, Virginia, lawyer, left the College of William and Mary in 1780 for the army. After the war, he read law with Thomas Jefferson. He represented Botetourt County in the House of Delegates, 1783–85, and Augusta County in 1786–88. In the state Convention, he voted to ratify the Constitution in June 1788. He served in the state Senate, 1797–1800, and as judge of the Virginia General Court, 1800–1831.

JOHN SULLIVAN (1740–1795), a Durham, New Hampshire, lawyer and a major general in the Continental Army during the Revolutionary War, was a delegate to Congress, 1774–75, 1780–81; state attorney general, 1781–86; assemblyman, 1785–86, 1788–89 (Speaker in 1785–86); and president (i.e., governor) of New Hampshire, 1786–88, 1789–90. As president of the New Hampshire Convention, he voted to ratify the Constitution in June

1788. He served as U.S. district judge for New Hampshire, 1789–95, although he heard no cases after 1792 due to ill health.

THOMAS SUMTER (1734–1832), an upcountry South Carolina planter, storekeeper, and land speculator, was born in Virginia and was a brigadier general of the state militia during the Revolutionary War. He served in the South Carolina House of Representatives, 1776–80, 1783–90, and in the state Convention, where he voted to ratify the Constitution in May 1788. He was a U.S. representative, 1789–93, 1797–1801, and a U.S. senator, 1801–10.

JOHN TAYLOR (c. 1734–1794), a physician from Douglass, Massachusetts, who held several local, colonial, and state offices in Maine before moving to Douglass during the Revolutionary War. He was a member of the state House of Representatives, 1787–88. In the state Convention, he voted against ratification of the Constitution in February 1788. He died while imprisoned for debt.

EDWARD TELFAIR (c. 1735–1807), a merchant who operated a saw mill with huge timber holdings, was born in Scotland and immigrated to Virginia, c. 1758. He moved to Savannah, Georgia, in 1766. He was a delegate to the Assembly, 1768; a member of the provincial congress, 1775–76; the council of safety, 1775–76; a delegate to Congress, 1777–83, 1784–86, 1787–89 (attended, 1778, 1780–82); and signed the Articles of Confederation in 1778. He was also an Indian commissioner, 1783, 1785; assemblyman, 1783, 1785, 1787; and governor, 1786–87, 1789–93. In the state Convention, he voted to ratify the Constitution in December 1787. He was president of the state Senate, 1806.

SAMUEL TENNEY (1748–1816), a Massachusetts native, studied medicine and began practice as a physician in Exeter, New Hampshire. During the Revolutionary War, he served as a surgeon, returning to Exeter after the war. He wrote a series of Federalist essays under the pseudonym "Alfredus." He was a probate judge for Rockingham County, 1793–1800, and a U.S. representative, 1800–1807.

SAMUEL THOMPSON (1735–1797), of Topsham, Maine, was a brigadier general in the state militia during the Revolutionary War. He served in the state House of Representatives, 1784–88, 1790–94, 1797. In the state Convention, he voted against ratification of the Constitution in February 1788.

JOHN TRUMBULL (1756–1843) was an American artist concentrating in the Revolutionary Era. Born in Lebanon, Connecticut, his father Jonathan Trumbull was governor from 1769–84. At the age of 17 he was graduated from Harvard. He lost the use of one eye due to a childhood accident. He served as an aide-de-camp to George Washington and to Horatio Gates before resigning from the army in 1777. In 1780 he traveled to London to study painting with Benjamin West. The British arrested him for high treason, and he was imprisoned for seven months. He returned to America in January 1782. The remainder of his career was spent in painting.

THOMAS TUDOR TUCKER (1745–1828), born in Bermuda, was a Charleston physician. He studied medicine at the University of Edinburgh and moved to South Carolina serving as a hospital surgeon during the Revolutionary War, 1781–83. He served in the state House of Representatives, 1782, 1785–88; Congress, 1787–88; and the U.S. House of

Representatives, 1789–93. He was Treasurer of the United States from 1801 until his death.

GEORGE LEE TURBERVILLE (1760–1798) was a Richmond County, Virginia, planter and a major in the Continental Army during the Revolutionary War, serving with Baron Von Steuben. He served in the Virginia House of Delegates, 1785–90. He was defeated for election to the state Convention.

JOSEPH BRADLEY VARNUM (1751–1821), was a Dracut, Massachusetts, farmer and militia colonel. He was a member of the state House of Representatives, 1780–82, 1783–85; the state Senate, 1785–95, 1817–21; the U.S. House of Representatives, 1795–1811 (Speaker, 1807–11); and the U.S. Senate, 1811–17 (president pro tempore, 1813–14). In the state Convention, he voted to ratify the Constitution in February 1788.

JOHN VINING (1758–1802), a lawyer from Dover, Delaware, was a delegate to Congress, 1784–86; state representative, 1787–88; U.S. representative, 1789–93; state senator, 1793; and U.S. senator, 1793–98.

JEREMIAH WADSWORTH (1743–1804) was a Hartford, Connecticut, merchant. Between 1775 and 1782 he was successively commissary for Connecticut troops, commissary of purchases for Congress, and commissary for the French forces, during which he amassed a large fortune. He was a member of the Connecticut House of Representatives, 1780–81, 1785–89, 1795; and Congress, 1788. In the state Convention, he voted to ratify the Constitution in January 1788. He served as a U.S. representative, 1789–95.

THOMAS B. WAIT (1762–1830), a native of Lynn, Massachusetts, served an apprenticeship on the Boston *Independent Chronicle* in the early 1780s, and on 1 January 1785, along with Benjamin Titcomb, Jr., he began printing the *Falmouth Gazette*, Maine's first newspaper. On 7 April 1786, Wait became the sole publisher of the new *Cumberland Gazette* in Portland. Somewhat of an Antifederalist, Wait printed both Federalist and Antifederalist pieces in his newspaper.

MERCY OTIS WARREN (1728–1814), a Plymouth and Milton, Massachusetts, historian, playwright, and poet. She was the sister of James Otis, a leading opponent of the British imperial policy before the Revolution, and wife of James Warren, a prominent Antifederalist and Speaker of the Massachusetts House of Representatives. Mercy Warren was a critic of British policy and published three satirical plays between 1772 and 1775 in the *Massachusetts Spy* and the *Boston Gazette*. In these plays, she attacked Governor Thomas Hutchinson and his family, leading supporters of the royal prerogative in America, and the mandamus councilors who held office under the Massachusetts Government Act (1774) at the pleasure of the Crown. She wrote an Antifederalist pamphlet under the pseudonym "A Columbian Patriot" that was published in February 1788. By 1787 she was deeply engaged in writing a history of the American Revolution which was eventually published in three volumes in 1805.

GEORGE WASHINGTON (1732–1799) was a Virginia planter living at Mount Vernon and a delegate to the Continental Congress, 1774–75. During the Revolutionary War, he was commander-in-chief of the Continental forces, 1775–83. Washington was president of the Constitutional Convention, 1787, and was the first U.S. President, 1789–97.

NOAH WEBSTER (1758–1843), a native of Connecticut, was a teacher, lexicographer, and political writer. A proponent of a strong central government, in 1787 he wrote a pamphlet supporting the new Constitution entitled *An Examination into the Leading Principles of the Federal Constitution* . . . under the pseudonym "A Citizen of America." In New York City, he edited the *American Magazine* throughout most of 1788. In 1806 Webster published *A Compendious Dictionary of the English Language* and in 1828 he followed with the two-volume *An American Dictionary of the English Language.*

PELATIAH WEBSTER (1726–1795), a merchant and a native of Connecticut, was a Congregational minister before moving to Philadelphia in 1755. Beginning in 1776, he wrote several essays on finance and political issues in which he opposed state paper money and supported the Bank of North America. His *A Dissertation on the Political Union and Constitution of the Thirteen United States of North America* . . . (1783) advocated the strengthening of the central government. In November 1787 as "A Citizen of Philadelphia" he advocated ratification of the Constitution in a pamphlet refuting the objections to the Constitution raised by "Brutus."

ALEXANDER WHITE (1738–1804) was a Winchester, Virginia, lawyer. He represented Frederick County in the House of Delegates, 1782–86, 1788–89. In the state Convention, he voted to ratify the Constitution in June 1788.

JAMES WHITE (1749–1809), a physician and lawyer, was a native of Philadelphia who moved to North Carolina after the Revolutionary War. He served in the state House of Commons, 1784–85; and was a delegate to Congress, 1786–88. In 1786, Congress appointed him superintendent of Indian affairs for the Southern District. He represented Hawkins County (later Tennessee) in the House of Commons and in the Fayetteville Convention, where he voted to ratify the Constitution in November 1789. In 1794, he was appointed to represent the territory of Tennessee in the U.S. House of Representatives. He remained in that position until 1796, when Tennessee became a state.

ROBERT WHITEHILL (1738–1813), the son of immigrants from northern Ireland, was born in Lancaster County, Pennsylvania. He moved to Cumberland County in 1770. Whitehill helped to write the Pennsylvania constitution of 1776 and opposed its revision in the Council of Censors in 1783–84. He was a delegate in the Assembly, 1776–78, 1784–87, and in the Supreme Executive Council, 1779–81. In the state Convention, he was one of the most frequent speakers and voted against ratification of the Constitution in December 1787. He signed the "Dissent of the Minority of the Pennsylvania Convention." He served in the state House of Representatives, 1797–1801; the state Senate, 1801–5; and the U.S. House of Representatives, 1805–13.

WILLIAM WIDGERY (c. 1753–1822), a native of England and a New Gloucester, Maine, lawyer, was a lieutenant on a privateer during Revolution. He was a member of the state House of Representatives, 1787–94, 1797–98; state Convention, where he voted against ratification in February 1788; and state Senate, 1795–96. He served as a town selectman, 1789–90, 1794–95.

HUGH WILLIAMSON (1735–1819), a native of Pennsylvania, moved to Edenton, North Carolina, in 1777 to engage in commerce and to practice medicine. He served in Congress, 1782–85, 1788, and in the state House of Commons, 1782, 1785. He was the ninth most frequent speaker in the Constitutional Convention, where he signed the Constitu-

tion, 1787. In the Fayetteville Convention, he voted to ratify the Constitution in November 1789. He served in the U.S. House of Representatives, 1790–93, after which he retired from public life and moved to New York City.

JAMES WILSON (1742–1798), a lawyer, was born in Scotland and came to Pennsylvania in 1765. He served in Congress, 1775–77, 1783 and 1785–86 and signed the Declaration of Independence. Throughout the 1780s, he advocated strengthening the powers of the central government and was a principal spokesman for Pennsylvania's Republican Party. He was the most frequent speaker in the Constitutional Convention, where he served on the Committee of Detail and signed the Constitution, 1787. Wilson was the first Convention delegate to defend the Constitution publicly in a speech in Philadelphia in the State House yard on 6 October 1787. Much of Wilson's speech provided standard arguments for supporters of the Constitution. In the state Convention he was the most frequent speaker and voted to ratify the Constitution in December 1787. He served as an associate justice of the U.S. Supreme Court, 1789–98. Failure of land speculations led to flight to New Jersey in 1797 and then to North Carolina to escape imprisonment for debt in Pennsylvania. He died in North Carolina.

BENJAMIN WORKMAN, an Irish immigrant, was an almanac-maker, mathematician, and tutor at the University of Pennsylvania, 1784–88. He published *Father Tammany's Almanac* with the issue for the year 1786. Workman was the probable author of twelve Antifederalist essays signed by "Philadelphiensis."

ABRAHAM YATES, JR. (1724–1796) was born in Albany, New York, and apprenticed to a shoemaker. He became a lawyer and wine seller. He served as sheriff of Albany County, 1754–59; a member of the Albany Common Council, 1754–73; the provincial Convention, 1775; all four provincial congresses, 1775–77; the first and second councils of safety, 1777–78; the Council of Appointment, 1777–78, 1784; the state Senate, 1777–78, 1779–90; and Congress, 1787–88. He was a Continental loan officer, 1777–81; receiver of the City of Albany, 1778–79; postmaster of Albany, 1783; mayor of the City of Albany, 1790 until his death. He was the author of many Antifederalist essays signed by "Sidney," or "Sydney." He led the public opposition to the Impost of 1783.

PETER W. YATES (1747–1826), an Albany, New York, lawyer, was a member of the state Assembly, 1784–85, and Congress, 1787. He was a member of the Albany Anti-Federal Committee in 1788.

JASPER YEATES (1745–1817), a Lancaster County, Pennsylvania, lawyer, was chairman of the committee of correspondence, 1775; captain of associators, 1776; congressional commissioner at the Fort Pitt conference with Indians, 1776. In the state Convention, he voted to ratify the Constitution in December 1787. He was an associate justice of the state Supreme Court, 1791–1817; and federal commissioner to confer with the Whiskey insurrectionists, 1794. He (along with two other justices) was acquitted in an impeachment trial, 1805.

Index

"A.B." (Francis Hopkinson): authorship of, 220, 368n; on "A Columbian Patriot," 343; on "Philadelphiensis," 368n

Adams, John (Braintree, Mass.): id., 490; on Samuel Adams, 278; criticizes power of Senate in Constitution, 277; on need for bill of rights, 115, 311

—letters from, 115, 277–78, 311–12

—letter to cited, 11n

—*Defence of the Constitutions,* 105n, 278, 278n; reference to "tyranny of the majority," 303, 304n; reference to "well born," 104, 105n

Adams, Samuel (Boston): id., 490; John Adams on, 278; and R.H. Lee's amendments to Constitution, 6, 12n; supports "Federal Farmer," *Letters,* 99

—letter from, 180–81

—letters to, 18–20, 20n, 64–66, 231–33, 435–37, 467–68

Address of the Seceding Pennsylvania Assemblymen, 121; events leading to, 16–17; printing of, 17; remarks by "A Citizen of Philadelphia," 17, 52–53; text of, 17

Address to the Members of the N.Y. and Va. Conventions: authorship of, 447; intent of, 446; text of, 447–49

Agriculture: Constitution will strengthen, 136

"Agrippa" (James Winthrop): response to, 275–77; text of, 194–95, 255–56, 292–94, 302–4

Aitken, Robert (Philadelphia): sells "Federal Farmer," *Letters,* 97, 98

"Alfredus" (Samuel Tenney), 157n; authorship of, 248; critical exchanges with "A Farmer," 248–52, 267–68; identifies authorship of "A Friend to the Republic," 311n; text of, 268–71

"Algernon Sidney": text of, 129–30, 312–13

Allen, Thomas (New York City): sells "Federal Farmer," *Letters,* 96; on "The New Roof," 219

"Amendment": circulates amendments to Constitution by R.I. voter, 393–94; text of, 393

Amendments to Articles of Confederation: preferred over replacement by Constitution, 303, 323, 431–34, 436; rejected during ratification of Articles of Confederation, 244, 245n. *See also* Articles of Confederation

Amendments to Constitution

—before ratification of Constitution: "Amendment" circulates amendments by R.I. voter, 393–94; "Agrippa" proposes, 303–4; Constitution lacks appropriate procedure for, 36; could be submitted to Confederation Congress by state conventions, 115–17; denial that jarring interests will prevent consensus on, 143, 176–77, 389–90, 475; John Lamb circular letter calling for, 451; R.H. Lee proposes, 3, 5–11, 12n, 13, 15, 18–20, 31–32, 32n; more probable before power is ceded to federal government, 367–68, 389–91; needed, 16, 45, 50, 51, 63–64, 66, 137–38, 170–71, 178–79, 195–97, 207, 211, 214–15, 303–4, 388, 430; Pa. Convention considers, 193, 193n; Pa. Convention dissenting minority proposes, 198–203; Society of Western Gentlemen propose, 442–46; state conventions have right to propose, 141–43; via second constitutional convention, 8, 11, 19, 30–33, 116, 135n, 143–44, 175–76, 178–80, 208–9, 211, 214, 216; Robert Whitehill proposes, 171–74, 198

—after adoption of Constitution: attempts before would prevent adoption, 12, 13, 58–59, 91, 121, 128, 194, 244, 247–48, 406, 437; conditional amendments would be fatal, 406, 430–31, 435; Constitution provides appropriate procedure for, 114, 115–17, 121, 135, 228, 244, 246–48, 257–58, 291, 308–9, 313, 325, 345–55, 357, 366, 411–12, 430, 438–40, 488–89; Federalists prefer proposed by new Congress rather than second convention, 4; Federalists vary on commitment to, 467–68; jarring interests of Antifederalists will prevent consensus, 91, 133–35, 194, 240, 244, 245, 247, 262–64, 313–14, 337, 367, 430–31, 435; Mass. recommendatory amendments, 3, 116, 304, 324–25, 326, 401, 405–6,

405n, 412, 412n, 436–37, 449n, 467, 477, 482n; needed, 34–35, 90–91, 278; R.H. Lee proposes amendments conditional two years after Congress meets, 466–67, 476–78, 478–79n; S.C. Convention recommends, 475; state conventions had no authorization to make, 133–35; will be easier to attain, 488–89
See also Bill of rights; Constitution, U.S.
AMERICA: can only be governed freely under a confederation, 436; too large for republican government, 431–32; will require coercive military to govern, 375, 431–34, 436. *See also* United States
"AMERICA" (Noah Webster): authorship of, 220–21; text of, 220–25
"AN AMERICAN" (Tench Coxe), 7; text of, 488–89
"AN AMERICAN CITIZEN" (Tench Coxe): authorship of, 56; quoted, 471, 475n; text of, 56–58
AMERICAN REVOLUTION: casualties, 232; Confederation Congress' inability to enforce requisitions, 281; cost of, 232; liberty secured by should not be surrendered, 364–65, 448; reclaimed the people's natural rights, 155–56, 163, 164, 307; was sparked by freedom of the press, 66; Washington's success as example to trust competent leaders, 203–4. *See also* Articles of Confederation; Declaration of Independence; Military; Requisitions
AMERICANS: are the military, 235; will not tolerate anything other than liberty, 234–35, 351, 410, 433; writs of assistance against colonists, 344–45
—described as: the favored of heaven, 184; most educated, 234; young, virtuous, and growing, 238
See also Human nature; The People; United States
"AMERICANUS" (John Stevens, Jr.): criticizes "Cato," 4
AMES, FISHER (Dedham, Mass.): id., 490
ANARCHY: opportunists thrive on, 244, 465; second constitutional convention could lead to, 246, 309; states on the brink of, 125, 134. *See also* Insurrections, domestic; Political conditions under Articles of Confederation
ANNAPOLIS CONVENTION: address of, 33
"ANOTHER CUSTOMER": on "The New Roof," 218–19
"ANTI-CINCINNATUS": criticizes "Cincinnatus," 79; text of, 204–6
"ANTIFEDERAL DISCOVERIES": text of, 377
ANTIFEDERALISTS: can form consensus on amendments, 143, 388, 389–90, 465; in Confederation Congress, 12, 13, 14–15n, 16n; of Constitutional Convention praised, 374–75; divided on mode of obtaining amendments, 476; intimidation against, 469, 470; main objections of, 21–22, 131; ratifying Constitution would be in best interest of, 242; threaten violence if no second constitutional convention, 261, 440–42; of Va. and N.Y. meet, 465, 467n; violence against, 16, 20, 20n, 80, 82n
—criticism of, 7, 147–48; absurd distrust in future legislatures, 348–49; have not offered better system, 291; have not recovered from habits under monarchy, 351, 416; hypocrisy of N.Y. Antifederalists on need for bill of rights, 482–83; intentionally delaying ratification, 40; jarring interests will prevent consensus on amendments, 91, 133–35, 194, 240, 244, 245, 247, 262–64, 313–14, 337, 367, 429, 430–31, 435; mislead the public, 209, 210n, 312–13, 333, 351, 371, 378–79, 395, 417, 429, 484–85; purport Congress' interests will differ from constituents, 357; seek division for personal gain, 147–48, 217, 292; seek to preserve lucrative state positions, 147, 217
—described as: blinded by mistaken zeal, 312; detestable faction, 344; ignorant, 356; some of the greatest men, 380
—literature of: circulation of, 6, 22–23, 28–30, 52n, 68, 70, 83, 98–99, 133n, 212, 314, 327, 377n, 442; criticism of, 133, 148, 312; influence of, 69; literary attacks on Federalists, 21, 22, 26, 219, 298, 332, 488; suppression of, 64, 79, 99
See also Federalists; Officeholders, U.S.; The People; Pseudonyms
APPROPRIATIONS: amendment proposed limiting to one year for army, 118–19, 394. *See also* Military; Requisitions
"ARISTIDES" (Alexander Contee Hanson): authorship of, 297, 314, 317, 323–24n; critical exchanges with "A Farmer," 298, 314–24, 394–96, 432; Luther Martin criticizes, 388–89; praised, 297–98, 370, 372n; *Remarks on the Proposed Plan of a Federal Government,* 297–99; text of, 299–301, 338–42, 359–64
ARISTOCRACY: Constitution is veiled attempt at, 21, 110, 182, 469; Constitution will lead to, 9, 31, 46–50, 79, 200–201, 211; Consti-

tution will not lead to, 112, 120; free press endangered by, 207. *See also* Government, debate over nature of; Monarchy; Oligarchy; Rich *vs.* poor
"ARISTOCROTIS" (William Petrikin): praises "An Old Whig," 35
ARMS, RIGHT TO BEAR: Constitution will not endanger, 333, 339; is essential to maintaining liberty, 235; proposed amendments securing, 172, 443. *See also* Bill of rights
ARMSTRONG, JOHN (Carlisle, Pa.): on R.H. Lee's amendments to Constitution, 7
—letter to, 430–31
ARMY: amendment proposed limiting appropriations to one year, 118–19, 394. *See also* American Revolution; Army, standing; Military; Militia; War
ARMY, STANDING: amendment needed to protect against, 207, 250–51, 394; Congress' power to maintain criticized, 50, 52n, 77, 89, 92, 159, 201–2, 266, 301–2, 386, 390, 469, 474, 479; Congress' power to maintain defended, 53–54, 118–19, 131, 136, 223, 271, 273, 334, 338–42, 371, 377; contented free people are a nation's greatest defense, 340–41; will be used to enforce unpopular judiciary under Constitution, 201–2; would be needed to help govern so vast a territory, 375, 431–34, 436. *See also* Army; Congress, U.S.; Military; Militia; War
ARTICLES OF CONFEDERATION: amend rather than replace with Constitution, 303, 323, 431–34, 436; amendments rejected during ratification of, 244, 245n; Constitutional Convention called only to revise, 5, 12–13, 19, 33, 51, 141, 157–58; formation of, 32–34, 181; has no bill of rights, 57, 122, 312; is defective, 161, 190–91, 263, 280; reserved powers explicit in, 42, 61–62, 80, 208, 208n, 312, 449n; states are more secure under, 180–81, 303, 323, 431–34; superior to Constitution, 448–49; unanimity provision of to amend, 383–84, 387n. *See also* American Revolution; Confederation Congress; Constitutional Convention
ASSEMBLY, RIGHT OF: as fundamental right that needs enumeration, 452. *See also* Bill of rights
ATHEISTS: fear of officeholding by, 309. *See also* Religion; Religious tests
ATTAINDER, BILL OF
—Constitution's provision against: disproves reserved-power theory, 78, 103, 265; praised, 301; validates sufficient embedded bill of rights, 483. *See also* Bill of rights; Due process of law
"ATTICUS": text of, 130–31

BAIL, EXCESSIVE: Constitution's lack of prohibition of defended, 223; proposed amendments protecting against, 172, 444–45. *See also* Bill of rights; Due process of law
BAILEY, FRANCIS (Philadelphia), 442; prints "Centinel," 23. *See also* Newspapers: Philadelphia *Freeman's Journal*
BARBOUR, THOMAS (Orange Co., Va.), 337n
BELCHERTOWN, MASS.: instructions to state convention delegates by, 195–98
BELKNAP, JEREMY (Boston): on Benjamin Rush letter, 415
BENSON, EGBERT (Dutchess Co., N.Y.): id., 490
BIBLICAL REFERENCES: cast first the beam from your own eye (Luke), 126, 127n, 192, 192n; King David speaking to the people (2 Samuel), 112; Esau selling his birthright (Genesis), 414, 415n; every man shall sit under his vine and none shall make him afraid (Micah), 422; evil company corrupts good habits (Corinthians), 47, 50n; foolish man who built his house upon sand (Matthew), 281, 281n; God may be all in all (Corinthians), 91, 91n; He spoke and the locusts came (Psalms), 251, 252n; He that is first in his own cause seemeth just (Proverbs), 192, 192n; Hitherto shalt thou come and no farther (Job), 217, 218n, 249, 257, 281, 405; Nebuchadnezzar's dream (Daniel), 407–8, 408n; Nimrod, 404; a prophet has no honor in his own country (John), 128, 129n; rulers are not a terror to good works (Romans), 270; they shall rule over their oppressors (Isaiah), 210–11n; tower of Babel (Genesis), 121, 121n, 404. *See also* Classical antiquity; Literary references; Religion
BILL OF RIGHTS: definition of, 398; described as grand bulwark of freedom, 238, 251; no harm in including, 139–40, 154; states without, 155, 209, 210n, 241–42, 289, 306, 400, 482–83, 488; theories on framers' omission of, 127–28, 322–23
—needed, 9–11, 63, 70–72, 74–78, 83–90, 124, 156, 158–61, 182–84, 187, 189, 194–95, 196, 197, 199, 226, 239, 249–51, 255, 265–66, 281, 293, 305, 320–23, 336, 374–76, 385–87, 388–92, 407–10, 413–14, 434, 449, 451–65, 481; absence of could lead to civil war, 15; absence will lead to tyranny,

15, 82, 87–90, 140, 305, 336, 391–92, 430, 431–34, 448; balanced social compact requires, 71, 74–78, 101–5, 156, 195; but doubtful all states will agree on, 311; civil government cannot exist without, 473; Constitution reveals an insufficient partial bill of rights, 78, 103, 431, 447, 459–60; Constitution's absence of criticized, 22, 24–25, 50–51, 64, 66, 115, 126, 127–28, 153, 170, 184, 207–8, 232–33, 293, 322, 330–31, 345; despite absence of in N.Y. constitution, 420; as a memorial of rights not surrendered, 336; as people's check against corrupt leaders, 18, 20n, 73, 83, 84–85, 107, 158–59, 187, 232, 274, 340, 401–5, 404, 408, 414, 436, 447–48, 472; the people's happiness depends on, 176, 374; proposed by Pa. Convention dissenting minority, 198–203; proposed by Robert Whitehill, 171–74, 198; proposed by Society of Western Gentlemen, 443–45; protects minority from tyranny of majority, 303; remaining four states could leverage ratification for, 301–2, 308, 449, 481, 482n; to secure rights of all citizens not just wealthy, 447; should be sent to state conventions, 69–70; should preface the Constitution, 115, 189, 210, 386, 387–88n; too important to be implicit, 115, 207–8, 345, 414; what is not declared can be denied, 68, 311; will secure dignity and importance to the states, 176–77; would be more secure than laws made by Congress, 252, 255–56; would enumerate essential rights too important to be implicit, 115, 207–8, 345, 407, 414, 458–65, 476–78; would increase power of government, 306

—not needed, 60, 95–96, 112–14, 121, 125, 130–31, 144–49, 150–51, 154–56, 188–89, 204–5, 217–18, 227–29, 230–31, 268–69, 272–74, 280, 300, 363, 407, 427, 470; allegory on uselessness and danger of, 218–20; are arrogant declarations of perpetuity, 348; Constitution is a sufficient bill of rights, 52–53, 154, 156, 222, 239, 276, 281–82, 324n, 345, 482–84, 486; government will be limited to delegated powers, 26, 31, 163, 165, 167, 217, 267–69, 280, 281, 289, 290–91, 300, 306–7, 328–29, 333–34, 337, 356, 361, 365–66, 368–69, 379, 400, 409; impossible to enumerate all rights, 166–67, 310–11; is desired by habit over reason, 398; meaningless, 8, 163–65, 166, 192, 220, 415–16, 471; meant for monarchies not free people, 227–28, 372, 410, 483–84; meant to inform rather than restrain, 337; N.Y. constitution does not have, 417, 482–83, 488; only necessary against un-elected powers, 227–28; representation and checks in Constitution preclude need for, 131–33, 164, 167, 168, 174, 191, 222, 228, 235, 280–81, 282–83, 345–55, 357, 363, 378–79, 415–16, 423–24; unnecessary if people resolve to be free, 114, 234, 376, 427; unnecessary on state or federal level, 155, 241–42, 289, 298; violations of common, 163–64; would destroy Constitution, 210, 220, 240; would endanger rights not enumerated, 117, 155–56, 165, 166–77, 188, 193, 256–57, 267, 277, 281–82, 289, 300, 306, 329–30, 349, 365–66, 409, 485

—British history of, 71, 73, 120–21, 144–45, 150–51, 153–54, 159–60, 162–63, 165, 227–29, 230–31, 238, 272, 288–89, 290n, 301, 307, 317–19, 328–29, 337, 350–51, 360, 368–69, 380, 396, 398–99, 409, 417, 448, 453–55, 484–85

—in Constitutional Convention: concern it would contradict slavery, 267; debated, 154, 157n; decision against defended, 290–91

See also Amendments to Constitution; Government, debate over nature of; Great Britain; *Entries for individual rights*

Blackstone, Sir William (England), 66n, 202n; on bill of rights, 9, 409; on British constitution, 428–29n, 462; on court of chancery, 118; on defects in jury trials, 428, 429n; on importance of jury trial, 9, 62, 85–86, 200–201, 381, 427–28, 465n; quoted, 120, 121n, 160, 161n, 429n; on writ of habeas corpus, 464–65n, 484. *See also* Great Britain, judiciary of; Political and legal writers and writings

Bland, Theodorick (Prince George Co., Va.): id., 490

Boston, Mass.: Antifederalists in endangered by publicly opposing Constitution, 83

Boudinot, Elias (Essex Co., N.J.): id., 490

Bowdoin, James (Boston): id., 491; praised, 345, 345n

—speech of in Mass. Convention, 281–82, 345

Boyd, Alexander (Philadelphia): distributes "Federal Farmer," *Letters,* 98

Breckenridge, Hugh Henry (Westmoreland Co., Pa.): id., 491; as possible author of "Cursory Remarks," 356n

BRECKENRIDGE, JOHN (Albemarle Co., Va.)
—letter to, 91
BRIGGS, JOHN HOWELL (Sussex Co., Va.): and Edmund Randolph's objections to Constitution, 212
BROADSIDES, PAMPHLETS, AND BOOKS: John Adams, Defence of the Constitutions, 105n, 278, 304n; Address of the Seceding Pa. Assemblymen, 16–17; An Address of the Subscribing Members of the Late House of Representatives of Pa. (Eleazer Oswald), 16; "Aristides" (Alexander Contee Hansen), Remarks on the Proposed Plan of a Federal Government, 297–301; "Centinel" (Samuel Bryan), 23, 83; "A Citizen of New-York" (John Jay), An Address to the People of the State of N.Y., on the Subject of the Constitution, 416–17; "A Citizen of Philadelphia" (Pelatiah Webster), Remarks on the Address of Sixteen Members, 17, 52–53; "A Columbian Patriot" (Mercy Otis Warren), Observations on the Constitution, 343–45; Constitutions of the Several Independent States of America, 210n; Debates of the Convention, of the State of Pa. (Thomas Lloyd), 166–69; Debates, Resolutions and Other Proceedings, of the Convention . . . of Massachusetts, 280–91; Dissent of the Minority of the Pa. Convention (Samuel Bryan), 198–203, 263–64, 292, 331–32; "A Farmer" (John Francis Mercer?), 314–24; "Federal Farmer," Letters, 96–105; "Federal Farmer," Additional Letters, 449–64; "A Federal Republican," A Review of the Constitution, 138–40; The Federalist (Alexander Hamilton, James Madison, and John Jay), 99, 124n, 252–53, 327, 482–87, 488, 496; Thomas Jefferson, Notes on the State of Virginia, 352, 354, 355n; "Marcus" (James Iredell), 326–30; Luther Martin, Genuine Information, 314, 412–14; "A Native of Virginia," Observations upon the Proposed Plan of Federal Government, 396–400; "An Officer of the Late Continental Army" (William Findley?), 94n; "A Plebeian" (Melancton Smith?), An Address to the People of the State of New-York, 418–20; "Timoleon," 83; "A True Friend," 189–90; Truth: Disadvantages of Federalism, Upon the New Plan, 144, 148n; Various Extracts on the Federal Government (Augustine Davis), 25. *See also* Magazines; Newspapers; Political and legal writers and writings
"BRUTUS" (Tobias Lear): authorship of, 29, 189; on George Mason's objections to Constitution, 29; text of, 73–78, 187–89
"BRUTUS" (Melancton Smith): authorship of, 78–79; criticized, 133; defends R.H. Lee's amendments to Constitution, 7; text of, 265–66
"BRUTUS, JUNIOR": criticized, 133
BRYAN, GEORGE (Philadelphia): id., 491; criticism of, 133, 292; as possible co-author of "An Old Whig" essays, 35; said to be author of "Centinel," 22, 133, 133n
BRYAN, SAMUEL (Philadelphia): id., 491; as author of "Centinel," 21, 22, 392–93; claims authorship of "Dissent of the Minority," 198. *See also* "Centinel"
BURKE, AEDANUS (Lower District, S.C.): id., 491

"CÆSAR" (Alexander Hamilton?): criticizes "Cato," 4, 16, 45–46; Hamilton as probable author of, 16; praise of, 16; text of, 16, 45–46
CALHOUN, PATRICK (Ninety Six District, S.C.): praise of, 266
CAMPBELL, ARTHUR (Washington Co., Va.): promotes Society of Western Gentlemen revision of Constitution, 442–43
CAPITAL, U.S.: Constitution gives Congress jurisdiction over, 250, 270; Pa. wants to be site of, 232–33, 233n
CAREY, MATHEW (Philadelphia), 219
CARLISLE, PA.: riot in, 377–79
CARMICHAEL, WILLIAM (Chestertown Co., Md./Spain), 482n
"CAROLINIENSIS": on Constitution's effect on Quakers, 110n
CARRINGTON, EDWARD (Powhatan Co., Va.): id., 491; on "Federal Farmer" pamphlets, 451; as possible author of "A Native of Virginia," 397
—letters from quoted, 5, 100
—letter to, 480–81
CARROLL, DANIEL (Montgomery Co., Md.): id., 491
"CASSIUS" (James Sullivan?), 7; criticizes R.H. Lee, 409–10
CASWELL, RICHARD (Dobbs Co., N.C.)
—letter to, 125
CATHOLICS: fear of officeholding by, 196, 309. *See also* Religion; Religious tests
"CATO" (George Clinton?), 100; authorship of, 4; criticized, 4, 16, 45–46, 133; criticizes "Cæsar," 16; influence of, 69; text of, 5

"CENTINEL" (Samuel Bryan): authorship of, 21, 22, 392–93; circulation of, 23; claims authorship of "Dissent of the Minority," 198; criticism of, 22, 40, 111–14, 377; defends "Cincinnatus," 79; defense of, 22; George Bryan said to be author of, 133, 133n; harsh language of, 22; influence of, 69; printed as broadside, 23, 83; text of, 21–25, 60–64, 109–10
CHECKS AND BALANCES: criticism of Constitution's reliance on, 472; only meaningful with adequate representation, 164; praised under Constitution, 116–17, 148, 167, 236, 280, 282, 291, 363, 372, 378, 379. *See also* Government, debate over nature of; Separation of powers
CHITTENDEN, THOMAS (Williston, Vt.): id., 491–92
"CINCINNATUS" (Arthur Lee): authorship of, 78–79; criticism of, 79, 204; criticizes James Wilson, 26; text of, 78–82, 105–9
"A CITIZEN": text of, 59–60
"A CITIZEN OF AMERICA" (Noah Webster): criticism of, 126–27; criticizes "Cincinnatus," 79
"A CITIZEN OF NEW-YORK" (John Jay): authorship of, 416; criticism of, 418–20; impact of, 417; publication of, 416; text of, 416–17
"A CITIZEN OF PENNSYLVANIA" (Pelatiah Webster): text of, 32–35
"A CITIZEN OF PHILADELPHIA" (Pelatiah Webster): as author of *Remarks on the Address of Sixteen Members,* 52–53; text of, 53–54, 202–3n
"A CITIZEN OF THE STATE OF MARYLAND": as author of "Remarks on a Standing Army," 314–15; text of, 412–14
"A CITIZEN OF THE UNITED STATES": text of, 313–14
CIVIL LAW: will replace common law under Constitution, 199–201. *See also* Great Britain, judiciary of; Judiciary, U.S.; Jury trial
CIVIL WAR: Constitution could lead to, 15, 470. *See also* Insurrections, domestic; Union; War
"CIVIS RUSTICUS": text of, 294–96
CLASSICAL ANTIQUITY: Aesop, 106, 109n; Aristotle, 44; Carneades of Cyrene, 84, 87n; Cato the Censor, 84, 87n; Julius Cæsar, 110, 426; Leonidas, 350; Lycurgus, 36, 40, 41n, 253; origin of "appeal" in Roman law, 44; Phaeton, 141; Sallust, 20n; Tarquin, 149. *See also* Biblical references; Governments, ancient and modern
CLAYTON, JOSHUA (New Castle, Del.): id., 492
CLERGY: criticism of Anglican, 186. *See also* Religion; Religious tests
CLINTON, DEWITT (New York City): as author of "A Countryman," 16
CLINTON, GEORGE (New York City): id., 492; as possible author of "Cato," 4; as possible author of "The Republican," 98
CLYMER, GEORGE (Philadelphia): id., 492
COGSWELL, THOMAS (Gilmanton, N.H.): id., 492; as author of "A Farmer," 248; as author of "A Friend to the Republic": Antifederalist, No. 2, 311n; as possible author of "A Friend to the Rights of the People": Antifederalist, No.1, 310n. *See also* "A Farmer"; "A Friend to the Republic"
COLDEN, CADWALLADER (Orange Co., N.Y.): and Forsey *v.* Cunningham, 63, 64n
"A COLUMBIAN PATRIOT" (Mercy Otis Warren): authorship of, 343; *Observations on the Constitution,* 343–44; text of, 344–45
COMMERCE: Constitution favors Northern States in, 10, 313; Constitution will strengthen, 136, 254n, 260, 292, 412; criticism of Congress' power to regulate under Constitution, 48, 301; defense of Congress' power to regulate under Constitution, 433; merchants willing to adopt a bad constitution for improved trade, 430; proposed amendment limiting Congress' power to regulate, 477
COMMON DEFENSE: proposed amendment on people's responsibility to contribute to, 445. *See also* Army; Army, standing; Militia; Military; Taxation
COMMON LAW: Constitution does not threaten, 189, 242, 264, 328, 329, 484; Constitution threatens, 30, 44–45, 56, 62, 63, 170, 194–95, 199–201, 255, 320–21, 461; replaced by civil law under Constitution, 199–201. *See also* Great Britain, judiciary of; Judiciary, U.S.; Jury trial
"CONCILIATOR": responses to, 252, 274–75; text of, 243–45, 256, 312
CONFEDERATION CONGRESS: Antifederalists in, 12–14, 14n, 15n; Articles of War by, 338, 342n; book of state constitutions printed for, 155, 157n; Convention members from criticized, 11, 11–12n, 65; Convention said to have similar alteration powers as, 13; debates manner of transmitting Constitution to states, 5; lacks coercive power to collect requisitions, 134, 281; state conventions could submit amend-

ments to Constitution to, 115–17. *See also* American Revolution; Articles of Confederation
"A CONFEDERATIONALIST": text of, 66–68
CONGRESS, U.S.: first session of as second constitutional convention, 244, 252; will be rivalrous under Constitution, 183
—powers of criticized, 9, 21, 30, 47–48, 61–62, 91–94, 101–2, 158–61, 170–71, 183, 201–2, 226, 249–51, 255–56, 265–66, 274, 293, 330–31, 365–66, 390, 403–5, 447–48, 456–64; control of militia, 50, 52n, 89, 92, 159, 202; creation of inferior courts, 194–95, 382–83, 387n; establishing mode of criminal process, 284–85; maintaining standing army, 50, 52n, 77, 89, 92, 159, 201–2, 266, 301–2, 386, 390, 469, 474, 479; to regulate commerce, 48, 301; to regulate elections, 158, 171, 178, 195, 313, 479; setting own salaries, 251; too dependent on virtue of officeholders, 185, 285, 294, 403–5, 472; will have ability to destroy freedom of the press, 92, 105; will never vote against its own interests, 37, 104, 222, 228; will not make laws agreeable to all states, 180–81
—powers of defended, 113–14, 117, 122, 131–33, 221–22, 228, 234–38, 241, 272–74, 280–81, 285–86, 299–300, 305, 345–55, 363, 411; Congress shares interests of the people, 131–33, 164, 168, 174, 191, 222, 228, 235, 282, 334, 346–49, 351, 353, 357, 423–24; distrust in future legislatures absurd, 348–49; House journals will deter misconduct, 112; limited to delegated powers, 167, 217, 267–69, 276, 280, 281, 282–83, 289, 290–91, 300, 306–7, 328–29, 333–34, 337, 356, 361, 365–66, 368–69, 379, 400, 409; power to do mischief has been removed, 411; to maintain standing army, 53, 118–19, 136, 223, 271, 273, 334, 338–42, 371, 377; to regulate commerce, 433; state legislatures also able to set their own salaries, 363; will be regulated by checks and balances, 116–17, 148, 167, 236, 280, 282, 291, 363, 378, 379; will be unable to alter form of government, 346; will be unable to interfere with states internal regulations, 280; will lack power to issue general warrants, 361–62
See also Checks and balances; Enumerated powers; House of Representatives, U.S.; Implied powers; Representation; Reserved powers; Senate, U.S.; Separation of powers; Supremacy clause
CONNECTICUT: has no bill of rights, 155; instructions to Preston delegates to Conn. Convention, 137–38; ratifies Constitution without amendments, 480
CONNECTICUT CHARTER (1662): as example of no need for bill of rights, 345, 355n
CONNECTICUT DECLARATION OF RIGHTS, 210n
CONNECTICUT GENERAL ASSEMBLY: as example of legislature checked by shared interests with the people, 133, 353
CONSCIENCE, FREEDOM OF: Constitution will not endanger, 75, 118, 149, 167, 192, 333, 409; Constitution endangers, 9, 63, 65, 72, 83–86, 89, 90, 110, 115n, 157, 184, 186, 202, 252, 311, 356, 386, 405, 409; as fundamental principle of free government, 243; as fundamental right that needs enumeration, 199; historical attempts to invade, 88–89; proposed amendments protecting, 171, 393; satire on loss of, 356. *See also* Bill of rights; Religion, freedom of; Religious tests
CONSCIENTIOUS OBJECTION: not protected in Constitution, 89, 170, 202, 202n; protection not needed in Constitution, 167; states are to protect, 119. *See also* Bill of rights; Quakers; Religion, freedom of
CONSTITUTION, U.S.: alterable therefore bill of rights not needed, 114, 115–17, 121, 135, 228, 244, 246–48, 257–58, 291, 308–9, 313, 325, 345–55, 357, 366, 411–12, 430, 438–40, 488–89; criticism that it must be ratified in toto, 214–15, 239–40, 335, 465–66; defense that it must be ratified in toto, 16, 244, 309, 466; greatness of revealed with increased examination, 312; imperfect work in progress, 279, 291, 325, 439–40; importance of clear language in, 83, 244, 389, 459; inferior to Articles of Confederation, 448; inferior to British constitution, 448; is defective, 184, 185n, 249–51, 278–79, 375, 389, 431; is a sufficient bill of rights, 154, 156, 222, 239, 276, 281–82, 324n, 345, 482–84, 486; is an insufficient partial bill of rights, 52–53, 78, 103, 431, 447, 459–60; is not a bill of rights, 293, 322, 345; many people rely on their leaders to interpret, 246; praised by Europeans, 302; proposed revision of by Society of Western Gentlemen, 442–46; purposefully ambiguous, 239; self-contained document, 194–95, 456; similar function as state constitutions, 80; veiled attempt at aristocracy, 21, 110, 182, 469; was weakened

by efforts to appease diverse interests, 267, 431; worst constitution in North America except Georgia, 431
—described as metaphor: arsenic, 392; building, 180; fabric, 232, 388, 412; grand edifice, 47; key stone, 282; large bone, 281; new roof, 220; piazza, 272; sandy foundation, 281; ship, 12
See also Amendments to Constitution; Bill of rights; Constitutional Convention; Government, debate over nature of; Ratification, procedure for; Ratification, prospects for
CONSTITUTIONAL CONVENTION: alteration powers of said to be similar to Confederation Congress, 13; Antifederalists of praised, 374–75; debate over bill of rights in, 154, 157n; debate over bill of rights aborted to save Constitution, 363, 406; delegates admittedly fallible and thus made Constitution alterable, 348–49; delegates influenced by self-interest, 387; delegates praised, 203, 216–17, 233, 246, 249, 253, 319–20, 322, 365, 438; did not authorize state conventions to amend or alter Constitution, 133–35; election of delegates to, 141; on federal judiciary, 382–83, 387n; formation of ratification requirement by, 383–84; formation of supremacy clause by, 382–83, 387n; public should not have blind faith in, 5, 51; securing rights not initial intent of, 217; speculation on why bill of rights was omitted by, 266, 267, 290–91, 322–23, 410; was a rare moment of consensus, 435
—criticism of: abused their power, 13, 22, 66, 93–94, 110, 141–42, 158, 264, 274; called only to revise Articles of Confederation, 5, 13–14, 51, 157–58; cannot preclude states from proposing amendments, 141; condescending toward the people, 142; Confederation Congress members in criticized, 11, 11–12n, 65; delegates accused of being office seekers, 39–40, 441; exemplifies how rulers overstretch their powers, 66, 408; failed to resolve jury trial in civil cases, 91; intended to create a consolidated government, 436, 469, 470, 471–72; rushed final week, 28, 290, 479; scurrility against delegates, 135; secrecy, 158, 161n, 198, 274, 331; violated Articles of Confederations, 5
See also Constitution, U.S.; Great men and the Constitution; Ratification, procedure for
CONSTITUTIONAL CONVENTION, SECOND: compared to Second Continental Congress, 116; dangers of, 4, 91, 245–46, 247, 252–53, 260, 278, 279, 309, 311, 314, 406, 429, 439; delegates would be elected by a growing Federalist majority, 242; first session of Congress will serve as, 244, 258; first session of Congress will not serve as, 252; needed, 8, 11, 19, 30, 31–32, 33, 135n, 143–44, 176, 178–79, 208–9, 211, 214, 216, 254, 261–62, 274–75, 388, 391, 434; not necessary if amendments sent to Confederation Congress, 116–17; Pa. Antifederalist threatens violence if no, 440–42; satirical essay supporting, 392–93; Va. legislature considers, 175–76, 179–80; will not succeed, 37, 40, 135, 262–64, 405, 431, 435, 488–89; will succeed, 261. *See also* Amendments to Constitution; Bill of rights
CONSTITUTIONALIST PARTY OF PENNSYLVANIA, 300, 301n
CONSTITUTIONS, STATE: Constitution supports, 148–50, 203; Constitution would destroy, 67, 159–60, 182–83, 195, 382–83, 390–91; formation of, 33, 35n; function of different than U.S. Constitution, 26, 268, 272–73; function of similar to U.S. Constitution, 80, 265; religious tests by, 310n; would provide bill of rights, 57, 149; without a bill of rights, 155, 209, 210n, 241–42, 289, 306, 400, 482–83, 488; would be insufficient protection of rights under Constitution, 320–21. *See also* Division of powers; States, impact of Constitution on; States under the Articles of Confederation; *Entries for individual states*
CONVENTIONS, STATE: have right to propose amendments, 69–70, 116, 141–43; not authorized to alter or amend Constitution, 133–35. *See also* Ratification, procedure for
COPYRIGHTS AND PATENTS: Constitution's provision for praised, 95, 96n
CORRUPTION: annual elections would encourage, 346–47; danger of corrupt judges, 107, 401–2; longer terms will encourage, 158–59; people need bill of rights as check against, 18, 20n, 73, 83, 84–85, 107, 158–59, 187, 232, 274, 338, 340, 395, 401–5, 404, 408, 414, 433–34, 436, 447–48, 472; would be exposed by House journals, 112. *See also* Bill of rights; Officeholders, U.S.; Power; Virtue
"A COUNTRYMAN": text of, 203–4
"A COUNTRYMAN" (DeWitt Clinton): authorship of, 16; criticizes "Cæsar," 16

"A COUNTRYMAN" (Hugh Hughes): authorship of, 22; defends "Centinel," 22
"A COUNTRYMAN" (Roger Sherman): authorship of, 133n; text of, 131–33, 174
COXE, TENCH (Philadelphia): id., 492; as author of "A Pennsylvanian," 418; as author of "An American," 7; as author of "An American Citizen," 56; as author of "Philanthropos," 262; and circulation of "Aristides" *Remarks,* 297
—letter from quoted, 262
See also "An American"; "An American Citizen"; "Philanthropos"
CREDIT, PUBLIC: will suffer without bill of rights, 254n, 335–36
CUMBERLAND COUNTY, PA.: petition to Pa. Convention from, 169–71
"CURTIOPOLIS": and "Federal Farmer," *Letters,* 100
"CURTIUS": criticizes "Cato," 4; praises "Cæsar," 16
CUSHING, WILLIAM (Scituate, Mass.): id., 492–93
—undelivered speech of to Mass. Convention by, 288–90
"A CUSTOMER": on James Wilson's 6 Oct. speech, 41–42

DALLAS, ALEXANDER J. (Philadelphia): as editor of *Pennsylvania Herald,* 25n
DANE, NATHAN (Beverly, Mass.), 12; id., 493; changes his opposition to Constitution, 15n
—letter from, 467–68
"DARES": criticizes Alexander White, 332
DAVIS, AUGUSTINE (Richmond, Va.), 332; possible printer of Edmund Randolph's pamphlet (27 Dec.), 212; prints "A True Friend," 189; prints "Dissent of the Minority," 332; prints *Various Extracts on the Federal Government,* 25; and R.H. Lee's amendments to Constitution, 6
DAWES, THOMAS, JR. (Boston): id., 493
—speech of in Mass. Convention, 286–88
DECLARATION OF INDEPENDENCE: Constitution endangers rights declared in, 153. *See also* American Revolution
DEISTS: fear of officeholding by, 309. *See also* Religion; Religious tests
DELAWARE: ratifies Constitution without amendments, 480
DELAWARE DECLARATION OF RIGHTS: 210n, 339, 342n; dispute in Pa. Convention regarding, 155, 156
DELEGATED POWERS: government under Constitution will be limited to, 167, 217, 267–69, 280, 281, 289, 290–91, 300, 306–7, 328–29, 333–34, 337, 356, 361, 365–66, 368–69, 379, 400, 409. *See also* Congress, U.S.; Enumerated powers; Implied powers; Judiciary, U.S.; President, U.S.; Reserved powers
DEMAGOGUES: arouse people's passions to remove liberties, 294. *See also* Antifederalists, criticism of; Discourse; Federalists, criticism of; The People; Power
"A DEMOCRATIC FEDERALIST": influence of, 69; responds to James Wilson's 6 Oct. speech, 41–45; text of, 42–45
"DENTATUS": text of, 241
DESPOTISM: America's vast territory will encourage, 433; Constitution is veiled attempt at, 18, 21, 373–76; fear is mainspring of, 258; republics are not immune to, 330, 354; unavoidable under Constitution, 432; will naturally arise if allowed, 244, 473. *See also* Dictators; Monarchy; Tyranny
"DETECTOR": criticizes "Centinel," 22
"A DIALOGUE BETWEEN AN ANTIFEDERALIST AND A FEDERALIST," 471–75
DICKINSON, JOHN (Wilmington, New Castle Co., Del.): id., 493; as author of "Fabius," 420, 424. *See also* "Fabius"
DICKINSON COLLEGE: and Carlisle riot, 378, 379n
DICTATORS: can be installed and removed by the people, 352–53, 354–55
DISCOURSE: accusations of scurrility, 135, 192, 267, 395–96; importance of plain and clear language, 83; information to the people obscured by polarized, 309; knowledge grows from free and candid, 17; objection is easiest form of, 328; propaganda in, 80, 82n, 294; on proper etiquette in, 395; silence and acquiescence are synonymous, 316
"DISSENT OF THE MINORITY OF PENNSYLVANIA CONVENTION" (Samuel Bryan?): criticizes aggressive manner of Pa. Federalists, 331–32; responses to, 220–21, 292, 331–35, 397; text of, 197–202; at variance with other Antifederalists, 263–64
DIVISION OF POWERS: Constitution praised for, 236, 426. *See also* Reserved powers; States, impact of Constitution on
DIXON, JOHN (Richmond, Va.): as possible printer of Edmund Randolph pamphlet, 212
DONALD, ALEXANDER (Henrico Co., Va.)
—letter to, 308

DUE PROCESS OF LAW: as fundamental right that needs enumeration, 452; proposed amendments guaranteeing, 172, 444. *See also* Bill of rights; Judiciary, U.S.; Laws

ECONOMIC CONDITIONS UNDER THE CONFEDERATION: distressed, 136, 254n, 260, 292. *See also* Commerce

EDENTON, N.C.: Hugh Williamson speech in, 94–96

EDES, BENJAMIN (Boston): as printer of the *Boston Gazette*, 182, 184n

ELECTIONS, U.S.: under Constitution praised, 235–37; criticism of Congress' power to regulate, 158, 171, 178, 195, 313, 479; defense of Congress' power to regulate, 333; money will always influence, 346–47; people will elect honest and able representatives, 236; primary safeguard from tyranny, 131–33, 164, 174, 191, 235, 345–55, 378, 415–16; proposed amendments on, 172–73, 444. *See also* Electors, presidential; House of Representatives, U.S.; President, U.S.; Representation; Senate, U.S.

ELECTORS, PRESIDENTIAL: criticism of, 9. *See also* President, U.S.

ELLSWORTH, OLIVER (Windsor, Conn.): id., 493. See also "A Landholder"

EMOLUMENTS CLAUSE: criticism of, 478; proposed amendment to, 444; validates sufficient embedded bill of rights, 483. *See also* Officeholders, U.S.

ENUMERATED POWERS: are dangerous without a bill of rights, 30, 101–2; well defined in Constitution, 276. *See also* Congress, U.S.; Delegated powers; Implied powers; Reserved powers

EUROPE: forest laws in, 224; governments of shaped by habits of the people, 340–41, 341n, 349–51, 355; prohibitive civil law courts in, 200; U.S. Constitution praised in, 302. *See also* France; Governments, ancient and modern; Great Britain

EX POST FACTO LAWS: are unavoidable, 30; favorite instrument of tyranny, 483–84; security against as fundamental right, 461

—Constitution's prohibition of: disproves reserved-power theory, 78, 103, 239, 460; as example of Constitution supplementing state constitutions, 145–46; motion to reconsider at Constitutional Convention, 192–93n; praised, 53, 56–57, 192, 296, 301, 329; validates sufficient embedded bill of rights, 483

"EXAMINER": answers "An Old Whig," 35; criticizes "Cato," 4

EXPENSES OF GOVERNMENT: government under Constitution would be too expensive, 184, 430. *See also* Appropriations; Taxation

"FABIUS" (John Dickinson): authorship of, 420, 424; text of, 420–24, 438–39

FACTIONS: Antifederalists accused of being a junto to poison the public mind, 344; Constitution will protect against, 346–47; jury trials protect against judiciary corrupted by, 85–86, 401–3. *See also* Antifederalists; Federalists; Interests

"A FARMER" (Thomas Cogswell): authorship of, 248; critical exchanges with "Alfredus," 248, 267–71; text of, 249–51

"A FARMER" (John Francis Mercer?): analysis of, 314–16; authorship of, 298, 447; critical exchanges with "Aristides," 298, 359–64; criticized by "A Plebeian," 370–71; publication of, 314; and "Remarks on a Standing Army," 314–15; text of, 314–24, 338–42, 394–96, 431–34

FAY, JOSEPH (Bennington, Vt.): id., 493

"FEDERAL FARMER," *ADDITIONAL LETTERS*, 467, 468n; circulation of, 451; publication of, 449–51; reviews of, 450–51; text of, 451–64

"FEDERAL FARMER," *LETTERS*: analysis of, 96–100; authorship of, 97; text of, 100–105

"A FEDERAL REPUBLICAN": defends "Centinel," 22; praises "A Democratic Federalist," 42; *A Review of the Constitution,* 138–40; text of, 139–40

FEDERALISM: bill of rights not needed in federal republic, 148–49; Montesquieu on, 432, 434n. *See also* Division of powers; Government, debate over nature of; Republican form of government; Reserved powers; States, impact of Constitution on; Supremacy clause

"A FEDERALIST": on Franklin's decision to support Constitution, 184

THE FEDERALIST (Alexander Hamilton, James Madison, and John Jay): authorship of, 482, 496; praised for candor, 124n; praises "Federal Farmer," 99; publication of, 327; text of, 252–53, 482–87, 488

FEDERALISTS: prefer amendments to be proposed by new Congress rather than second convention, 4; varied motivations of, 467–68; Washington and Franklin's endorsement of Constitution utilized by, 131, 325, 470

—criticism of: accused of suppressing Antifederalist literature, 64, 79, 99; ask the people to blindly trust wealthy leaders, 39, 51, 106, 110, 392, 470; disingenuously present Constitution, 61, 209, 292–93, 305, 372–76, 387–91, 395, 407, 413, 467–68, 469–70; elitist, 92–93; intimidation of Antifederalists, 469, 470; intolerant to dissent, 469, 470; offer Constitution only in toto, 239–40, 335, 465–66; out of touch with the People, 261–62; rushing ratification, 16, 20, 80, 82n, 87, 198, 261–62, 331–32, 389; violence against Antifederalists, 16, 20, 20n, 80, 82n
—described as: bold conspirators, 305; despots, 22, 93; false patriots, 22; federal hacks, 470; office-hunters, 22, 39–40, 67, 141, 219, 441; Phaetons, 141; Tories, 469; well-born, 210, 262
—literature of: attacks on Antifederalists, 7, 22, 67, 344, 395–96, 407; circulation of, 25, 53, 133n, 212, 297, 417
See also Antifederalists; Great men and the Constitution; Interests; Officeholders, U.S.; Pseudonyms
"The Federalist's Political Creed": text of, 468–70
Fenner, Arthur, Jr. (Providence, R.I.): id., 493
Findley, William (Westmoreland Co., Pa.), 198; criticism of "Aristides" by, 298; as possible author of "An Officer of the Late Continental Army," 94n
Fines, Excessive: Constitution's lack of prohibition against defended, 223. *See also* Due process of law
Fisher, Daniel (Greensville Co., Va.), 397
Fitzsimons, Thomas (Philadelphia): id., 493–94
Fleming, William (Botetourt Co., Va.): on R.H. Lee's amendments to Constitution, 7
"Foederal Constitution": quoted, 67, 68n; text of, 31
Foreign Invasion: contented free people are best defense against, 340–41; Constitution will protect against, 53, 259–60, 280–81, 325. *See also* Army, standing; Common defense; Military; War
Foreign Opinion of the U.S.: Constitution will raise, 176, 254n, 335–36
Forrest, Uriah (St. Mary's Co., Md.)
—letter to, 225
Forsey *v.* Cunningham (1763), 113, 115n; Cadwallader Colden and, 63, 64n
Foster, Theodore (Providence, R.I.): id., 494
France: assistance in American Revolution by, 32; Louis XIV and Franco-Dutch war, 341; monarchy in is shaped by habits of the people, 350–51; potential war with Great Britain, 400–401; prohibitive civil law courts in, 200. *See also* Europe; Governments, ancient and modern
Franklin, Benjamin (Philadelphia): id., 494; commentary on final speech of at Constitutional Convention, 184–86; criticized for promoting Constitution, 40; involvement in framing of Constitution questioned, 128; old age enabled him to be duped at Constitutional Convention, 22, 131; quoted criticizing Constitution, 184–86; quoted praising Constitution, 206; significance of endorsement of Constitution by, 131, 470
"A Freeholder": text of, 410–12
"A Freeman," 471, 475n
"A Friend to Equal Liberty": text of, 392–93
"A Friend to Order": criticizes "A Democratic Federalist," 42
"A Friend to the Confederation": on "Publius," 124n
"A Friend to the Republic": Anti-Federalist, No. 2 (Thomas Cogswell): authorship of, 311n; text of, 310–11
"A Friend to the Rights of the People": Anti-Federalist, No. 1: authorship of, 310n; text of, 309–10

"G.": text of, 121
General Welfare: as end of government, 74–75, 170, 186, 265, 345, 444, 473. *See also* Happiness; Public good
"A Gentleman of Distinction": praises "Aristides," 298n
Georgia: ratifies Constitution without amendments, 480
Gerry, Elbridge (Cambridge, Mass.): id., 494; John Adams on, 278; assistance to R.H. Lee by, 64, 65, 192; on Constitution's prohibition of ex post facto laws, 192, 192–93n; criticism of reserved-power theory by, 177n; efforts by to include bill of rights at Constitutional Convention, 387–88n; "Federal Farmer" authorship attributed to, 97–98; and George Mason's objections to Constitution, 28–29; as a non-signer of Constitution, 95, 96n, 233–34; objections to Constitution, 3, 130, 131n, 176, 177n; response to, 397; suspected author of "A Columbian Patriot,"

343; at variance with other Antifederalists, 262–64, 313
—letter from to Mass. General Court against Constitution, 50–52
"GILES HICKORY" (Noah Webster): authorship of, 226–27; text of, 227–30, 345–55
GOD: Constitution will terminate nation's blessing from, 184; laws only regarded by people who regard laws of, 310; unlimited power can only be justly managed by, 403–4. *See also* Biblical references; Religion
"GOMEZ": criticizes "Cincinnatus," 79; replies to "An Old Whig," 35
GOODHUE, BENJAMIN (Salem, Mass.): id., 494
GORDON, JAMES, JR. (Orange Co., Va.)
—letter to, 335–36
GORE, CHRISTOPHER (Boston): id., 494
—speech of in Mass. Convention, 285–86
GORHAM, NATHANIEL (Charlestown, Mass.), 287, 288n; id., 494–95
GOVERNMENT, DEBATE OVER NATURE OF: amended Articles of Confederation preferred over Constitution, 303, 323, 431–34, 436; better to have no general government than a bad one, 431; bill of rights will increase power and effectiveness of government, 476; civil government cannot exist without a bill of rights, 473; civil government needs support from religion, 310; Constitution is too presumptive of virtuous leaders, 185, 285, 403–5, 472; Constitution will create a consolidated government, 21, 74, 101, 159, 194, 224, 255, 280, 300, 313, 436, 469, 470, 471–72, 474–75; Constitution will not create a consolidated government, 472; every government requires trust which may be abused, 191; features in government are more fixed with time, 215, 259; free societies are most obedient, 71; free societies are most powerful, 306; government is shaped by the people not parchment declarations, 349–51, 353, 355, 410–11, 427; government tends to encroach on liberty over time, 481; in government what may be done will be done, 448; government will either stagnate or be oppressive, 433–34; government's end is general welfare, 74–75, 170, 186, 265, 345, 444, 473; governments gradually remove rights until reclaimed by force, 392; governments should not be made in haste, 8, 38–39, 51, 67, 123, 141; legislatures are agents of the people, 413–14, 417; no constitution in elected government is unalterable, 228–30; no government can be framed without doubts, 125; people have right to design their government, 142; proposed amendment declaring best form of government, 444; representation and checks in Constitution will assure against tyranny, 131–33, 164, 167, 168, 174, 191, 222, 228, 235, 280–81, 282–83, 346–49, 351, 353, 357, 378, 415–16, 423–24; rights must be enumerated for government to protect them, 407; social compacts must be specific to each nation's disposition, 408; society begins with consensus, 74; society is only place where people can be equally free, 422; U.S. too vast for centralized government, 180, 199; vast territories can only be governed freely under a confederation, 436; vast territories require coercive force of standing armies, 375, 431–34, 436; vast territories too large for republican government, 431–32. *See also* Checks and balances; Delegated powers; Enumerated powers; Federalism; Governments, ancient and modern; Implied powers; Republican form of government; Reserved powers; Separation of powers; Social compact
GOVERNMENTS, ANCIENT AND MODERN: Achaemenid (Persian) Empire, 340; Chile, 341; China, 112, 115n; contented free people have been a nation's greatest defense, 340–41; European governments shaped by habits of the people, 340–41, 342n, 349–51, 355; Gran Canaria, 341; India, 341; jury trial in Sweden, 62, 86, 200–201; Mexico, 341; oppressive use of standing armies in, 251; Peru, 341; Poland, 114, 115n, 154; representation in has failed without bill of rights, 448; standing army needed for vast Russia empire, 436, 437n; Swiss cantons, 340–41; Turkey, 433; United States' circumstances differ from, 334, 339
—Denmark: people of chose monarchy, 341–42, 342n, 349–50
—Greece: Athenian Court of Areopagus, 286, 286n; lack of equal liberty in, 454; Spartan constitution, 36; Spartan valor, 340–41
—The Netherlands: Franco-Dutch war, 341; people of chose aristocracy, 350; Union of Utrecht had no bill of rights, 400, 400n
—Rome, 425; Cæsar's tyranny operated under existing forms, 110; lack of equal liberty in, 454; lack of representation in, 454–56; Twelve Tables, 149

—Spain: Charles V, 350; colonization, 341; inquisition, 284; Philip II, 426
See also Classical antiquity; Europe; France; Government, debate over nature of; Great Britain
GOVERNORS, STATE: could remove jury trial in civil cases under Constitution, 301
GRAHAM, CATHERINE MACAULAY (England): on "A Columbian Patriot," 343
GRAYSON, WILLIAM (Prince William Co., Va.), 467n; id., 495
—letter from, 115
GREAT BRITAIN: bill of rights history in, 71, 73, 120–21, 144–45, 150–51, 153–54, 159–60, 162–63, 165, 227–29, 230–31, 238, 272, 288–89, 290n, 301, 307, 317–19, 328–29, 337, 350–51, 360, 368–69, 380, 396, 398–99, 409, 417, 448, 453–55, 484–85; constitution of, 65–66, 144–45, 448; feudal system in, 401–2; freedom of press in, 112, 295–96, 486–87n; licensing of press in, 95, 96n; maintains their liberties under much inferior constitution, 236–37; Norman conquest, 380, 453; potential war with France, 400–401; Simon de Montfort, 227, 230n; standing army in, 223, 338; treason in, 168; Wars of the Roses, 398, 400n
—acts and charters: Act of Settlement (1701), 380; Bill of Rights (1689), 154, 380, 399; Confirmation of Charters (1100), 398, 400n; Coronation Charter, 398, 400n; Habeas Corpus Act (1679), 227–28, 230n; Magna Charta (1215), 114, 120, 129, 130, 144, 151, 152, 153–54, 155, 159–60, 163, 227, 229, 230, 230n, 231n, 256, 301, 307, 368–69, 381, 398, 448, 453, 454, 458, 462, 484; Mutiny Act, 338; Petition of Right (1628), 20n, 144, 154, 155, 163, 288–89, 290n, 324n, 399, 448, 484; Septennial Act (1716), 346
—House of Commons, 272, 398, 399
—House of Lords, 272
—judiciary of: William Blackstone, 9, 62, 66n, 85–86, 118, 120, 121n, 160, 161n, 200–201, 355n, 381, 409, 427–28, 428–29n, 462, 464–65n, 484; Lord Camden (Charles Pratt), 108, 109n; common law, 20n, 43–44, 144, 189, 189n, 200; Edward Coke, 20n, 288, 290n, 352; court of chancery, 44, 118, 200, 222; Matthew Hale, 318–19; Lord John Holt on libel, 19, 20n; George Jeffreys, 107, 109n; jury trials in, 9, 43–44, 62, 85–86, 108, 200–201, 401–2; Lord Mansfield (William Murray), 107, 109n; N.Y. adopts common and statute law from, 483–86, 487n; Rex *v.* Nickerson, 287, 288n; Rex *v.* Woodfall, 82, 82n; John Somers, 318–19; Robert Tresilian, 107, 109n; John Vaughan quoted, 108; writs of assistance, 344, 345n
—monarchs: Charles I, 288–89, 290n, 319; Charles II, 380; Edward the Confessor, 229; Elizabeth I, 399; George II, 344, 345n; Henry III, 227, 230n, 398; Henry VII, 398–99, 400n; James II, 317, 399, 466, 477; James VI and I, 399; John, 162, 484; William and Mary, 272, 337, 399, 466, 477; William III, 162–63, 317; William the Conqueror, 162
—politicians and political writers: Earl of Abingdon (Willoughby Bertie), 413, 414n; Edmund Burke, 413, 414n; John Hampden, 345; Robert Filmer, 317, 324n, 360, 396; William Pitt the Younger, 229, 230n; John Pym, 345
See also American Revolution; Europe; Governments, ancient and modern
GREAT MEN AND THE CONSTITUTION: Federalists criticized for overpraising Washington, 374; great men can make great mistakes, 51; people asked to blindly trust, 39, 51, 106, 110, 392, 470; significance of endorsement of Constitution by Washington and Franklin, 131, 325, 470; Washington and Franklin said to have been duped at Constitutional Convention, 22; Washington's success in Revolution justifies trust in competent leaders, 203–4. *See also* Federalists; Officeholders, U.S.
GREENLEAF, THOMAS (New York City)
—newspaper printings: "A Columbian Patriot," *Observations on the Constitution,* 343–44; "An Address to the People of the State of New-York," 418; "Federal Farmer," *Letters,* 96; "Federal Farmer," *Additional Letters,* 449–50; responses to James Wilson's 6 Oct. speech, 73; "Timoleon," 83. *See also* Newspapers: New York, *New York Journal*

HABEAS CORPUS, WRIT OF
—Constitution's provision for: criticized, 77–78, 148n, 386; defended, 136, 163, 165, 167, 223; disproves reserved-power theory, 78, 103, 156, 239, 265, 460; needs to be secured in a bill of rights, 199, 452, 461, 462; validates sufficient embedded bill of rights, 483–84. *See also* Bill of rights
HAMILTON, ALEXANDER (New York City): id., 495; as co-author of *The Federalist,* 482, 488;

as possible author of "Cæsar," 4, 16. *See also The Federalist*
HANCOCK, JOHN (Boston): id., 495; eases apprehensions of Mass. Antifederalists, 412; and Mass. recommendatory amendments, 324–25, 326, 412, 412n
HANSON, ALEXANDER CONTEE (Annapolis, Md.): id., 495; as author of "Aristides," 297, 314, 317, 323–24n. *See also* "Aristides"
HANSON, CHARLES WALLACE (Annapolis, Md.), 299
HAPPINESS: bill of rights will safeguard pursuit of, 374; equal freedom produces the greatest, 421–22; government's purpose is to promote, 265; proposed amendment declaring pursuit of as unalienable right, 443. *See also* General welfare; Liberty; Natural rights; The People
HARTLEY, THOMAS (York Co., Pa.): id., 495
—speech of in Pa. Convention, 161–63
HAZARD, EBENEZER (New York City): on "The New Roof," 219
HEATH, WILLIAM (Roxbury, Mass.): id., 496
HENRY, PATRICK (Prince Edward Co., Va.), 467n; advocates a second constitutional convention, 175, 179–80, 208; said to be against confederation, 209; said to favor Southern confederation, 245–46, 429
HEREDITARY HONORS: prohibition of fundamental right that needs enumeration, 452; proposed amendment prohibiting, 444. *See also* Nobility, titles of
"HICKORY": praises "A Democratic Federalist," 42
HILL, JEREMIAH (Biddeford, Maine): id., 496
—letter from, 241
HISTORY: Constitution's historical significance, 69, 70, 216, 440; is filled with oppression so rights must be secured, 88–89. *See also* Classical antiquity; France; Governments, ancient and modern; Great Britain; Political and legal writers and writings
HODGE, ROBERT (New York City): sells "Federal Farmer," *Letters,* 96
HOLMES, ABRAHAM (Rochester, Mass.): id., 496
—speech of in Mass. Convention, 283–85
"AN HONEST AMERICAN": response to, 257–61, 274–75; text of, 252
HOPKINS, SAMUEL JR. (Mecklenburg Co., Va.): on payment of Va. delegates for second constitutional convention, 175
HOPKINSON, FRANCIS (Philadelphia): id., 496; as author of "A.B.," 220, 368n; as author of "The New Roof," 218; criticism of, 219. *See also* "The New Roof"
HOUSE OF REPRESENTATIVES, U.S.: length of term of criticized, 158; length of term of praised, 347; people will elect honest and able representatives, 236; representation in criticized, 313; representation in praised, 9, 136, 235–36; representatives are agents of the people, 346; should be included in ratifying treaties, 193; weakness of, 9; will be a check of even a king and his nobles, 236. *See also* Congress, U.S.; Representation
HOWARD, JOHN EAGER (Baltimore Co., Md.): id., 496
HUGHES, HUGH (Westchester Co., N.Y.): as author of "A Countryman," 22; on "Federal Farmer," *Letters,* 97–98
HUGHES, JAMES (Fairfax Co., Va.): on Mason's objections to Constitution, 29
HUMAN NATURE: to abuse authority, 404–5; doesn't change, 88; duality of requires power to remain with the people, 472; to find fault rather than do right, 428; includes despots and anarchists, 244; men are more readily led than driven, 46; men are weak and foolish creatures of habit, 232, 403–5; perfection is not to be expected in, 248, 401; personalities are always odious, 395; to seek to increase one's power, 73, 84, 404–5; self-interest is, 70, 74; wickedness of the few and servility of the many, 181. *See also* Corruption; The People; Power; Virtue
"HUM-STRUM": on authorship of "The New Roof," 218
HUNTING AND FISHING RIGHTS: Constitution will not endanger, 223–24; propose amendment protecting, 172
HUNTINGTON, BENJAMIN (Norwich, Conn.): id., 496
HUTCHINSON, JAMES (Philadelphia): as possible co-author of "An Old Whig" essays, 35; receives "Federal Farmer," *Letters,* 98
HUTCHINSON, THOMAS (Boston), 288n; criticized, 244

"AN IMPARTIAL CITIZEN," 7; text of, 246–48
"THE IMPARTIAL EXAMINER": text of, 330–31, 364–66
IMPEACHMENT: Constitution's provision for criticized, 8–9, 47, 187, 474; Constitution's provision for praised, 372; Constitution's provision for validates sufficient embedded bill of rights, 483. *See also* Checks and balances; Congress, U.S.; Officeholders, U.S.
IMPLIED POWERS: Constitution's partial bill of rights suggests, 78, 103, 239, 265, 456–57,

459–60; danger of bill of rights supporting, 485. *See also* Bill of rights; Delegated powers; Enumerated powers; Reserved powers
IMPOST OF 1781: failure to ratify led to deranged economy, 292. *See also* Articles of Confederation; Taxation
IMPOST OF 1783: as proof that states won't agree on alterations, 134. *See also* Articles of Confederation; Taxation
"AN INDEPENDENT FREEHOLDER" (Alexander White?): text of, 272–74
INDIANS: valor of Lenape and Shawnee warriors, 341
INDICTMENTS: amendment proposed guaranteeing grand jury, 394; criticism that there is no guarantee of by grand jury, 283, 285n, 461; defense of Constitution's lack of guarantee of by grand jury, 286. *See also* Due process of law; Judiciary, U.S.; Laws
INSURRECTIONS, DOMESTIC: Carlisle, Pa., riot, 377–79; importance of maintaining standing army against, 53, 341; likely under Constitution, 180–81; people will resist encroachments of power, 217; Shays's Rebellion as argument for Constitution, 135; will further strengthen standing armies, 159. *See also* Civil war; Mobs
INTERESTS: are barriers to equitable government, 70; jury trial in civil cases needed to protect against, 85–86, 401–3; in U.S. are too disparate for a centralized government, 180–81, 199, 431–32; will not prevent amendments before ratification, 143, 389–90, 475; will prevent amendments before ratification, 91, 133–35, 194, 240, 244, 245, 247, 313–14, 337, 367, 430–31, 435. *See also* Antifederalists; Corruption; Federalists; Human nature
IREDELL, JAMES (Edenton, N.C.): id., 496; as author of "Marcus," 326–27
—letter to, 253–54
See also "Marcus"

JACKSON, HENRY (Boston)
—letter to, 12
JACKSON, JAMES (Effingham Co., Ga.): id., 496
JARVIS, CHARLES (Boston): id., 497
JAY, JOHN (New York City): id., 497; as author of "A Citizen of New-York," 416–17; said to be author of "Brutus," 78–79. *See also* "A Citizen of New-York"; *The Federalist*
JAY, SARAH (New York City): identifies authorship of "A Citizen of New-York," 416
JEFFERSON, THOMAS (Albemarle Co., Va./France): id., 497; favors Mass. recommendatory amendments, 482n; on jury trial in civil cases, 205, 301; on need for bill of rights, 207–8, 225, 301–2, 449, 481; *Notes on the State of Virginia*, 347, 352, 354, 355n; on re-eligibility of President, 205, 301, 449, 481; on remaining four states leveraging ratification for bill of rights, 301–2, 308, 481, 482n; Samuel Bryan discloses "Centinel" authorship to, 21; shifts in favor of Constitution, 481; on a standing army, 301–2; statements on Va. constitution criticized, 347–55; on term limits of President, 301; on James Wilson's reserved-power theory, 207–8
—letters from, 207–8, 225, 301–2, 308, 449, 480–81
—letters to, 115, 297, 366–67, 429, 479–80
"JOHN DE WITT": text of, 72–73
JOHNSON, CHARLES (Chowan Co., N.C.): id., 497
—letter from, 253–54
JOHNSON, WILLIAM SAMUEL (Stratford, Conn.): id., 497
JUDGES: ability to hold other offices under Constitution criticized, 390; bill of rights needed to ensure independence of, 476; danger of corrupt, 107, 401–3; judges are inherently biased, 10, 62. *See also* Judiciary, U.S.
JUDICIARIES, STATE: federal judiciary will destroy, 22, 194–95, 382–83; federal judiciary will not endanger, 361–62. *See also* Judiciary, U.S.; States, impact of Constitution on
JUDICIARY, U.S.: circuit courts, 44–45, 45n; Constitution lacks clarity regarding, 389; criticism of Congress' power to establish inferior courts, 194–95, 382–83, 387n; grand jury endangered by, 283; grand jury not endangered by, 286; Judiciary Act (1789), 45n; power of too vast, 48–49, 50, 183, 283–85, 382–83, 390, 419, 462; will be enforced by standing army under Constitution, 201–2
—appellate jurisdiction of: criticism of as to law and fact, 9, 25, 44–45, 81, 85, 107, 129, 199–201, 383, 385, 389, 419, 477; defense of appellate jurisdiction as to law and fact, 118, 222, 286–87
—common law: Constitution does not threaten, 189, 242, 264, 328, 329, 484; Constitution threatens, 30, 44–45, 56, 62, 63, 170, 194–95, 199–201, 255, 320–21,

461; replaced by civil law under Constitution, 199–201
—proposed amendments concerning: limiting federal jurisdiction in cases between states and foreigners, 394; limiting Supreme Court appellate jurisdiction to law, 477; requiring indictment by a grand jury, 394; restricting power of judiciary, 173, 178
See also Great Britain, judiciary of; Judges; Judiciaries, state; Jury trial
"JUNIUS" (James Sullivan?): libel case regarding, 20n; text of, 275–76
JURY TRIAL: amendment needed safeguarding, 19, 62–63, 90, 103–5, 199–201, 207–8, 304, 460–61; amendments proposed safeguarding, 172, 199, 444, 477; Constitution does not endanger, 57–58, 131, 163, 165, 222–23, 270, 273–74, 276, 286–88, 417, 426–28; Constitution endangers, 19, 55–56, 148n, 171–74, 283–84, 419, 470, 476; Constitution's provision for disproves reserved-power theory, 103, 156, 239, 460–61; Constitution's provision for validates sufficient embedded bill of rights, 483; criticism of Constitution's failure to provide juries of the vicinage, 9, 19, 45, 76–77, 85, 104, 201, 283, 402; defense of Constitution's failure to provide juries of the vicinage, 131, 285–86; as fundamental principle of free government, 243; importance of, 9, 81–82, 85–86, 104, 108, 200–201, 381, 427–28, 461; lack of in admiralty cases, 27, 57, 95, 200, 222; mode of jury selection proposed, 250; origins of, 401–2; in Pa. Declaration of Rights (1776), 24–25, 57, 169; satire on loss of, 356. *See also* Great Britain, judiciary of; Judiciary, U.S.; Jury trial in civil cases
JURY TRIAL IN CIVIL CASES: compared to criminal cases, 402–3; importance of, 62, 183, 401–3; proposed amendments securing, 394, 461, 477; proposed revision of Constitution including, 455
—absence in Constitution criticized, 9–10, 24–25, 43–45, 55, 62–63, 81–82, 85–86, 91, 107–8, 115, 129–30, 138, 171, 183, 199–201, 207–8, 225, 301, 306, 311, 390, 419, 470; fundamental right that needs enumeration, 199, 452, 460; would give governors power to remove jury trial, 301
—absence in Constitution defended, 27, 54, 60, 91, 95, 117–18, 146–47, 168–69, 222–23, 285, 287, 377, 380–81, 381n, 409–10, 438
See also Great Britain, judiciary of; Judiciary, U.S.; Jury trial

KENT, JAMES (Dutchess Co., N.Y.): praises "Federal Farmer," *Letters,* 100
KING, RUFUS (Newburyport, Mass./New York City): id., 497; criticizes "A Columbian Patriot," 344; suspected author of "A Columbian Patriot," 343
—letter from, 208–9
KNOX, HENRY (Boston/New York City): id., 498
—letters from, 12, 58–59, 435
—letter to, 41

LAFAYETTE, MARQUIS DE (France): id., 498; suggests amendments after ratification of Constitution, 302, 435n; urges Washington to accept presidency, 226
—letters from, 58–59, 226, 302
—letters to, 309, 435, 437–38
LAMB, JOHN (New York City): id., 497; "Cato" authorship and, 4; circular letter by, 451; and "Federal Farmer," *Letters,* 99, 451; as possible author of "A Plebeian," 418
"LANDHOLDER" (Daniel of St. Thomas Jenifer?): Luther Martin's reply to, 381–87
"A LANDHOLDER" (Oliver Ellsworth): text of, 191–92
LANSING, ABRAHAM G. (Albany Co., N.Y.): at variance with other Antifederalists, 313
LAURANCE, JOHN (New York City): id., 498
LAWRENCE, ELISHA (Monmouth Co., N.J.): id., 498
LAWS: are not perpetual, 347–51; constitutions are not above, 352; constitutions distinct from, 413; disparate states will lack consensus on, 180–81; liberty cannot exist without, 235, 378, 444; only regarded by people who regard laws of God, 310; proposed amendment concerning unprecedented, 445; proposed amendment creating two-year trial period for, 477; proposed amendments securing due process, 172, 444; would be easier to repeal than constitutional rights, 252, 255–56. *See also* Common law; Congress, U.S.; Judiciary, U.S.; Supremacy clause
LEAR, TOBIAS (Portsmouth, N.H./Fairfax Co., Va.): id., 498; as author of "Brutus," 29, 189. *See also* "Brutus" (Tobias Lear)
LEDLIE, HUGH (Hartford, Conn.): and "Federal Farmer," *Letters,* 99
LEE, ARTHUR (Prince William Co., Va.), 181n; id., 498; as author of "Cincinnatus," 78–79. *See also* "Cincinnatus"

LEE, CHARLES (Fairfax Co., Va.), 192, 192n
LEE, HENRY (Westmoreland Co., Va.): id., 498
LEE, RICHARD BLAND (Loudon Co., Va.): id., 499
LEE, RICHARD HENRY (Westmoreland Co., Va.): id., 499; alleged author of "Brutus," 78–79; alleged author of "Federal Farmer," 97–98, 99; Antifederalist reputation of, 12, 14n; critical of Constitutional Convention exceeding powers, 5; criticism of, 192, 209, 247, 278–79, 409–10; declines appointment to Constitutional Convention, 11–12n, 65; declines attending Va. Convention, 468, 468n; on differing motivations of Federalists, 467–68; and George Mason's objections to Constitution, 28; possible retort to James Wilson's reserved-power theory, 414, 415n; praised, 375; proposed amendments to Constitution, 3, 5–11, 12n, 13, 15, 18–20, 31–32, 32n, 364; proposes amendments conditional two years after new Congress meets, 466–67, 476–78, 478n; response regarding critics, 7; supports second constitutional convention, 8, 11, 19; at variance with other Antifederalists, 313, 367
—letters from, 5–11, 15, 18–20, 31–32, 64–66, 335–36, 435–37, 465–67, 475–79
—letter to, 180–81
LEE, SILAS (Biddeford, Maine): id., 499
—letter from, 277
LEGISLATURES: can repeal laws and alter constitutions, 345–55. *See also* Congress, U.S.; Laws
LEGISLATURES, STATE: are better suited to elect Senators, 237; bill of rights have been effective against, 249–50; will lose power under Constitution, 325; will never call a national convention, 37; will protect the rights of the people, 237; will retain extensive powers under Constitution, 237. *See also* Federalism; Legislatures; States, impact of Constitution on
LELAND, JOHN (Orange Co., Va.), 337
LIBEL: freedom of the press endangered by under Constitution, 19, 20n, 43, 45n, 81–82, 183, 305, 470; freedom of the press not endangered by under Constitution, 221–22
LIBERTY: amendments needed before people will surrender, 389; cannot exist without law, 378, 472; Constitution neglects, 431; Constitution will not endanger, 233–37; Constitution's end is power rather than, 65–66; demagogues arouse passions to diminish, 294; depends on confidence in representatives, 258; depends on education, 234; depends on people not parchment declarations, 114, 234, 349–51, 376, 410–11, 427, 444; described in biblical verse, 422, 424n; distrust is a guardian angel of, 404; government tends to encroach on over time, 481; is human nature, 234; is not human nature, 181; must not be sacrificed for temporary safety, 38, 39n; nothing is more valuable than, 414; once lost is rarely revived, 311; once obtained will not be surrendered, 380; only secure under U.S. confederation, 436; only secured by free elections, 351, 353; people need government to have equal, 422; property is essential to, 234–35, 402; proposed amendment declaring as unalienable right, 443; strengthens a nation, 71, 306, 335–36, 340–41; was originally equal among the people, 408; will be perfect under Constitution with bill of rights, 176; will be secured by state legislatures, 237. *See also* Government, debate over nature of; Natural rights; The People
LINCOLN, JAMES (Ninety Six District, S.C.): id., 499
—speech of in S.C. House by, 266
LITERARY REFERENCES: Aesop's Fables, "The Wolves and the Sheep," 106, 109n; Miguel de Cervantes, *Don Quixote,* 268, 351; William Cowper, *Poems, by William Cowper, of the Inner Temple,* 68, 68n; John Milton, *Paradise Lost,* 356; Shakespeare, *Hamlet,* 186, 187n. *See also* Biblical references; Broadsides, pamphlets, and books; Poetry; Political and legal writers and writings; Satire
LIVERMORE, SAMUEL (Holderness, N.H.): id., 499
LIVINGSTON, WILLIAM (Essex Co., N.J.), 356, 357n
LOUDON, JOHN (New York City): publishes "A Citizen of New-York," 416; publishes "Federal Farmer," *Additional Letters,* 449
LOUDON, SAMUEL (New York City), 226; publishes "A Citizen of New-York," 416
"A LUNARIAN": criticizes "Cincinnatus," 79
"LYCURGUS": recommends "Montezuma," 46

"M.": text of, 90–91
MCKEAN, THOMAS (New Castle Co., Del./Philadelphia), 322, 324n; id., 499; praised, 162

—speech of in Pa. Convention, 153–54
M'Lean, John (New York City/Norfolk, Va.): prints "Marcus," 327
Madison, James (Orange Co., Va.): id., 499; on Antifederalists in Confederation Congress, 12–14, 14n, 15n; on Benjamin Franklin's final speech at Constitutional Convention, 185; as co-author of *The Federalist,* 252; on danger of second constitutional convention, 245–46, 252–53, 406, 429; on importance of Federalist literature, 262; on people following trusted leaders, 246; praises Mass. recommendatory amendments, 406; on R.H. Lee's proposed amendments to Constitution, 5, 7, 13
—letters from, 12–15, 193–94, 245–46, 406, 429
—letters to, 179–80, 193, 208, 336–37, 405
See also The Federalist
Madison, James, Sr. (Orange Co., Va.): on R.H. Lee's proposed amendments to Constitution, 7
Magazines
—*American Magazine* (New York): on "Aristides," 299; on "A Citizen of New-York," 416, 417; on "A Plebeian," 418; on "Federal Farmer," 100, 451; "Giles Hickory" essays in, 226–30, 345–55; Noah Webster as editor of, 226–27, 416, 418, 451
—*American Museum* (Philadelphia), 17, 25, 442; R.H. Lee's proposed amendments to Constitution in, 6; "An Officer of the Late Continental Army" essay in, 94n
—*Monthly Review* (England): on "Aristides," 299
See also Broadsides, pamphlets, and books; Newspapers
"A Man of No Party": criticizes "Centinel," 22; praises "Cæsar," 16
"Many Customers": text of, 177–79
"Marcus" (James Iredell): authorship of, 326; text of, 326–30
"Mariot": text of, 230–31
Marlborough, New Hampshire: instructs delegates to N.H. Convention, 254–55
Martin, Alexander (Salisbury, N.C.): id., 499–500
Martin, Luther (Baltimore/Harford Co., Md.): id., 500; contribution to supremacy clause by, 382–83; *Genuine Information,* 314, 412–14; at variance with other Antifederalists, 313; text of, 381–92, 403–5
Maryland: ratifies Constitution without amendments, 480
Maryland Convention: addresses members of N.Y. and Va. conventions, 446–49; recommendatory amendments considered by, 435, 446–49
Maryland Declaration of Rights (1776), 210n; declares standing armies dangerous to liberty, 339; praised, 362, 396; prohibits quartering troops, 339; states that military should be subordinate to civil authority, 339; states that militia is proper defense of free government, 339
Mason, George (Fairfax Co./Stafford Co., Va.): id., 500; advocates a second constitutional convention, 175, 180, 208; on Constitution's prohibition of ex post facto laws, 192, 192–93n; criticism of, 28, 180, 208, 242–43, 262–64, 429; efforts by to include bill of rights at Constitutional Convention, 387–88n; as non-signer of Constitution, 95, 96n, 233–34, 479; objections to Constitution, 3, 5, 28–31, 148n, 187–89, 189n, 191–92, 377, 377n, 479, 480n; praised, 156, 294; response to Mason's objections to Constitution, 29, 294–96, 326–30, 397; supports R.H. Lee's amendments to Constitution, 13; at variance with other Antifederalists, 262–64, 313, 367
—letters from, 30–31, 479–80
—letters to, 15, 465–67
Massachusetts: ratifies Constitution with recommendatory amendments, 480
Massachusetts Constitution (1780): prohibits laws repugnant to Mass. constitution, 281n. *See also* Massachusetts Declaration of Rights
Massachusetts Convention (1788): debates on bill of rights from, 280–91; praised for ratification with recommendatory amendments, 437–38, 467; recommendatory amendments by, 3, 116, 304, 324–25, 326, 401, 405–6, 405n, 412, 412n, 436–37, 449n, 467, 477, 482n
Massachusetts Declaration of Rights (1780), 148n, 210n, 287; Constitution would support, 149–50, 150n; as example of effective bill of rights, 290, 293, 303; prohibits quartering of soldiers, 339; protects right to bear arms, 339
Massachusetts General Court: stamp act passed in, 94n
—letter to from Elbridge Gerry opposing Constitution, 50–52
Mayhew, John (Boston), 186
"M.C.": text of, 69–70

"MEDIUM": criticizes "Cato," 4
MERCER, JAMES (Spotsylvania Co., Va.): id., 500
MERCER, JOHN FRANCIS (Anne Arundel Co., Md.): id., 500; possible author of "A Farmer," 298, 315, 447; possible author of Address to the Members of N.Y. and Va. conventions, 447
MERCHANTS: favor Constitution despite its danger to the people, 430. *See also* Commerce
MIFFLIN, THOMAS (Philadelphia Co., Pa.): id., 500
MILITARY: American people are the, 235; Articles of War, 338, 342n; importance of military schools, 53; praise of two-year limited appropriation for, 119; proposed amendment subordinating military to civil power, 445; subordination of to civil power as fundamental right that needs enumeration, 452. *See also* Appropriations; Army; Army, standing; Militia; Quartering of soldiers
MILITIA: are essential to maintaining liberty, 235, 251; criticism of Congress' power to control, 50, 52n, 89, 92, 159, 202, 390, 479; as fundamental right that needs enumeration, 452; proposed amendments restricting federal use of, 173, 394. *See also* Army; Military
MOBS: attack on James Wilson's home, 92, 94n; Carlisle riot, 377–79; Federalists' use of in Pa., 16, 80, 82n. *See also* Insurrections, domestic
MONARCHY: absence of Constitution will lead to, 291; Antifederalists are fighting an imaginary, 351, 416; can be installed and removed by the people, 350–51, 355; Constitution will lead to, 9, 31, 211. *See also* Despotism; France; Government, debate over nature of; Governments, ancient and modern; Great Britain; President, U.S.
MONOPOLIES: criticism of Congress power to establish under Constitution, 30, 63, 114, 207, 308; proposed amendment denying Congress power to establish, 477
MONTAGU, JOHN (England), 287, 288n
MONTESQUIEU, CHARLES BARON DE (France), 106, 320; on aristocrats' aversion to a free press, 207; on British constitution, 65–66, 66n; on despotism relying on fear, 258, 261n; on federalism, 432, 434n; quote on confederations by, 297. *See also* Political and legal writers and writings
"MONTEZUMA": text of, 46–50
MORRIS, GOUVERNEUR (Philadelphia): id., 501
MORRIS, ROBERT (Philadelphia): praises "The New Roof," 219
MURRAY, FRANCIS (Bucks Co., Pa.): praises "An Old Whig," 35
MUSLIMS: fear of office holding by, 196, 309. *See also* Religion, freedom of; Religious tests

NASSON, SAMUEL (Sanford, Maine): id., 501
"A NATIVE OF VIRGINIA," 7; *Observations upon the Proposed Plan of Federal Government,* 396–400; possible authorship of, 397; text of, 398–400
NATURAL RIGHTS: are alienable without bill of rights, 336; are balanced with federal power in Constitution, 71; are founded in nature and reason, 380; are not given, 18, 74, 218; are unalienable regardless of bill of rights, 354, 451–52; compared with constitutional rights, 451–52; Constitution does not endanger, 364; Constitution does not mention, 377, 431, 470; government's purpose is to protect, 265, 345, 374, 473; must be enumerated to be protected by government, 407–8, 446; some must be sacrificed to enter into society, 72, 73, 125, 217, 336, 421, 422, 432–33; we retain all that we do not part with, 289; were reclaimed by American Revolution, 155–56, 163, 164. *See also* Bill of rights; Liberty; Social compact
"NEW ENGLAND": criticizes "Centinel," 22; and "Federal Farmer," *Letters,* 97, 99
NEW HAMPSHIRE CONVENTION: address to by "A Friend to the Republic," 310–11; adjourned until June, 480
NEW HAMPSHIRE DECLARATION OF RIGHTS (1784), 210n; enumerated rights in, 268, 272n; used against Ten Pound Act, 250, 251n
NEW JERSEY: has no bill of rights, 155; ratifies Constitution without amendments, 480
"THE NEW ROOF" (Francis Hopkinson): authorship of, 218; response to, 218–19; text of, 220
NEW YORK: Albany Antifederal Committee circular, 430, 430n; Antifederalists criticized for demanding bill of rights when N.Y. has none, 488
NEW YORK CONSTITUTION (1777): adopts common and statute law of England, 483–86, 487n; freedom of the press not protected under, 417, 418n, 420; has equiva-

lent of bill of rights, 210n, 482–83; has no bill of rights, 155, 210n, 289, 417, 420, 482
NEW YORK CONVENTION: address to by Md. Antifederalist, 446–49
NEWSPAPERS
IN CONNECTICUT
—*Connecticut Courant,* 22; printed, 191–92, 233–38
—*New Haven Gazette*: printed, 131–33, 174; cited, 23, 83
IN GEORGIA
—*Gazette of the State of Georgia*: printed, 379–81, 401–3
IN MARYLAND
—*Maryland Gazette* (Annapolis), 297
—*Maryland Gazette* (Baltimore), 315; printed, 203–4, 314–24, 326, 338–42, 394–96, 431–34; efforts on impartiality by, 42
—*Maryland Journal,* 7, 22, 297, 316; printed, 111–14, 209–10, 359–64, 370–72, 377, 381–92, 403
IN MASSACHUSETTS AND MAINE
—*American Herald*: printed, 72–73, 123–24; cited, 52n, 97, 99
—*Boston Gazette*: printed, 182–84
—*Cumberland Gazette,* 6; printed, 176–77, 186–87
—*Hampshire Gazette*: printed, 204–6
—*Independent Chronicle*: printed, 130–31, 184–86, 216–18, 400–401
—*Massachusetts Centinel,* 22; printed, 122, 136, 144–48, 148–50, 230–31, 291; cited, 29, 35, 51, 343; quoted, 344
—*Massachusetts Gazette*: printed, 127–28, 194–95, 255–56, 276–77, 292–94, 302–4; cited, 97, 99
—*Salem Mercury,* 6; printed, 240–41
IN NEW HAMPSHIRE
—*Freeman's Oracle*: printed, 248–51, 268–71, 309–11; cited, 157n
—*New Hampshire Spy*: printed, 90–91
IN NEW JERSEY
—*Federal Post,* 139
IN NEW YORK
—*Country Journal,* 97, 98
—*Daily Advertiser,* 4, 16, 22, 79; printed, 16, 45–46, 94–96, 220–25; cited, 100
—*Federal Herald,* 430
—*Independent Journal*: printed, 252–53
—*New York Journal,* 4, 16, 22, 23, 226, 344, 449–50; cited, 98, 105; quoted, 96–97, 98
—*New York Packet,* 226, 416, 449–50; printed, 73–82, 83–87, 105–9, 265–66, 324; cited, 98; quoted, 96–97
—*New York Weekly Journal*: and Zenger libel case, 43, 45n, 81–82
—*Northern Centinel,* 4, 22
IN NORTH CAROLINA
—*Edenton Intelligencer*: printed, 412
—*North Carolina Gazette*: printed, 206–7
—*Wilmington Centinel,* 344
IN PENNSYLVANIA
—*Carlisle Gazette*: printed, 59–60, 169–71, 368–69, 377–78, 406–9, 471–75
—*Freeman's Journal,* 21, 138, 218, 219; printed, 60–64, 126–27, 128–29, 184, 210–11, 261–62, 305, 388; cited, 21
—*Independent Gazetteer,* 7, 21, 22, 79, 305–6; printed, 17, 23–25, 35–39, 40–41, 46–50, 54–56, 64, 70–72, 87–90, 91–94, 109–10, 117–19, 129–30, 133–35, 140–44, 177–79, 241, 243–46, 252, 257–61, 274–75, 292, 312–13, 392–93, 440–42, 468–70; cited, 21, 82n, 94n, 97, 98, 218, 220
—*Pennsylvania Gazette,* 21, 22, 23, 25, 35, 79, 139, 220; printed, 31, 242, 262–64, 313–14, 439–40; cited, 68n, 78, 203n
—*Pennsylvania Herald,* 21, 25, 138; printed, 39–40, 41–45, 66–70, 120–21, 154–57, 163–65, 171–74; cited, 218
—*Pennsylvania Journal,* 297
—*Pennsylvania Mercury*: printed, 420–24, 438–39; cited, 82n, 219
—*Pennsylvania Packet,* 21, 139, 331; printed, 7–12, 32–35, 198–203, 218–20, 242–43, 488–89
—*Pittsburgh Gazette*: printed, 121, 355–56, 372–77
IN RHODE ISLAND
—*Providence Gazette*: printed, 393–94
IN SOUTH CAROLINA
—*City Gazette*: cited, 109n
—*Columbian Herald,* 7, 22; printed, 415–16
IN VIRGINIA
—*Norfolk and Portsmouth Journal,* 22; printed, 326–30
—*Virginia Gazette* (Petersburg), 6, 7, 29, 212, 396–97; printed, 246–48; cited, 415n
—*Virginia Gazette* (Richmond), 212; cited, 480n
—*Virginia Gazette* (Winchester): printed, 272–74, 331–35, 337–38; cited, 480n
—*Virginia Independent Chronicle,* 7, 25, 396; printed, 278–79, 294–96; 306–8, 330–31, 364–66, 409, 410–12, 442–46; cited, 277n
—*Virginia Journal*: printed, 187–89
—*Winchester Gazette,* 272

See also Broadsides, pamphlets, and books; Magazines; Printers, publishers, and booksellers
NICHOLAS, GEORGE (Albemarle Co., Va.): id., 501; as possible author of "The State Soldier," 308n; praises "Aristides," 298
—letter from, 405, 325–26
—letter to, 406
NICHOLSON, JOHN (Cumberland Co., Pa.): and "Federal Farmer," *Letters,* 98
NICKERSON, ANSELL, 288n
NOBILITY, TITLES OF: Constitution's prohibition of disproves reserved-power theory, 78, 239, 459–60; Constitution's prohibition of validates sufficient embedded bill of rights, 483; prohibition of as cornerstone of republican government, 483. *See also* Aristocracy; Monarchy
NORTH CAROLINA DECLARATION OF RIGHTS (1776), 210n; protects right to bear arms, 339; states that military is subordinate to civil authority, 339; states that standing armies dangerous to liberty, 339
NORTH VS. SOUTH: Constitution favors Northern States, 10; Constitution favors Southern States, 412; too disparate for a centralized government, 180–81, 199, 431–32. *See also* America; Civil war; Interests; United States

OFFICEHOLDERS, U.S.: bill of rights as people's check against corrupt, 18, 20n, 73, 83, 84–85, 107, 158–59, 187, 232, 274, 340, 401–5, 404, 408, 414, 436, 447–48, 472; Constitution is dependent on virtue of, 185, 403–5; Constitution protects against sinecures, 136; liberty will be secure with able and entrusted, 237–38, 258; proposed amendment declaring accountable of to the people, 444; suspicion of is healthy, 106; term length of, 9; will be predominately wealthy under Constitution, 104, 346; will share interests with the people under Constitution, 131–33, 164, 168, 174, 191, 222, 228, 235, 282, 346–49, 351, 353, 357, 423–24. *See also* Congress, U.S.; Corruption; Judges; President, U.S.
"AN OFFICER OF THE LATE CONTINENTAL ARMY" (William Findley?): authorship of, 94n; criticized, 133; criticizes James Wilson, 26; response to, 117–19; text of, 91–94
"AN OLD CONSTITUTIONALIST": text of, 64
"AN OLD WHIG" (George Bryan, James Hutchinson, and John Smilie?): authorship of, 35; criticized, 40, 133; influence of, 69; response to, 35; text of, 35–39, 54–56, 70–72, 87–90, 140–44, 305–6
OLIGARCHY: Constitution will lead to, 9, 18; minimum quorums of legislatures as example of, 353; sacrifices of Revolution are being wasted on, 448. *See also* Aristocracy; Government, debate over nature of
OLIVER, ANDREW (England), 288n
"ONE OF THE COMMON PEOPLE": text of, 182–84
"ONE OF THE LATE ARMY": text of, 126–27
"ONE OF THE MIDDLING-INTEREST": criticism of, 182–84; text of, 144–48
"ONE OF THE PEOPLE," 7, 409, 410n; text of, 209–10
"ONE OF THE WHIGS OF 1788": defends "Centinel," 22
OOTHOUDT, HENRY (Albany Co., N.Y.): distributes "Federal Farmer," *Letters,* 98
ORTH, ADAM (Dauphin Co., Pa.): and Society of Western Gentlemen revision of Constitution, 442–43
OSGOOD, SAMUEL (Andover, Mass.), 181n, 226; id., 501
—letter from, 231–33
OSWALD, ELEAZER (Philadelphia): prints Address of the Seceding Assemblymen, 17; prints "An Old Whig," 35, 70. *See also* Newspapers: Pennsylvania *Independent Gazetteer*
OTIS, SAMUEL A. (Boston): on authorship of "A Columbian Patriot," 343

PACA, WILLIAM (Harford Co., Md.), 396n; id., 501
PAGE, JOHN (Gloucester Co., Va.): id., 501; changes position on Constitution, 366, 367n
—letter from, 366–67
PAGE, MANN, JR. (Spotsylvania Co., Va.): and Edmund Randolph's objections to Constitution, 212
PARSONS, THEOPHILUS (Newburyport, Mass.): id., 501–2
—speech of in Mass. Convention, 282–83, 290–91
PARTRIDGE, GEORGE (Duxbury, Mass.): id., 502
PARTY SPIRIT: Constitution as source of, 416n; information to the public obscured by, 309; must be tempered to enable rational discourse, 124n. *See also* Antifederalists; Discourse; Federalists

PATRIOTISM: American's spirit of, 364; only true check on government, 112, 113; ostentation is incompatible with true, 316. *See also* American Revolution; Liberty; Union
PENDLETON, EDMUND (Caroline Co., Va.), 478n; influence of, 16n
—letter to, 475–79
PENDLETON, HENRY (Saxe Gotha District, S.C.), 16n
PENN, WILLIAM (Philadelphia): and Treaty of Shackamaxon, 163
PENNSYLVANIA: Antifederalist threat of violence if no second constitutional convention, 440–42; Antifederalists petition state legislature against ratification, 441n; Federalists petition state legislature for ratification, 357–58; ratifies Constitution without amendments, 480
PENNSYLVANIA ASSEMBLY: Address of the Seceding Assemblymen to, 16–17, 40, 52–53; Council of Censors, 164, 165n
PENNSYLVANIA CONVENTION: cedes land for federal capital under Constitution, 233n; considers amendments to Constitution, 193, 193n; Cumberland Co. petition read in, 169–71; "Dissent of the Minority" of, 197–202, 263–64, 292, 331–32, 337–38, 441; Federalists accused of aggressive rush to ratify Constitution, 332; responses to "Dissent of the Minority" of, 220–21, 331–35
—speeches in: Thomas Hartley, 161–63; Thomas McKean, 153–54; Benjamin Rush, 163–64; John Smilie, 151–53, 156–57; Robert Whitehill, 157–61, 171–74; James Wilson, 150–51, 154–56, 166–69; Jasper Yeates, 165
PENNSYLVANIA DECLARATIONS OF RIGHTS AND CONSTITUTION (1776), 25n, 210n; conscientious objection protected in, 89, 202n; contradiction regarding freedom of religion in, 241; freedom of press protected in, 24; freedom of religion in, 202n; freedom of speech protected in, 24; jury trial in, 24–25, 57; military is subordinate to civil authority in, 339; often violated, 164; private property protected in, 24; protection from search and seizure in, 24; protects right to bear arms, 339; quoted, 152; states that standing armies in peace time are dangerous, 339
"A PENNSYLVANIAN" (Tench Coxe): authorship of, 418; criticizes "A Plebeian," 418
THE PEOPLE: are the supreme power thus bill of rights unnecessary, 122, 151, 217, 228, 241, 325, 378, 457, 484–86; asked to blindly trust wealthy leaders, 39, 51, 106, 110, 392, 470; born free thus do not need to claim rights, 289, 290n; can only be equally free within a society, 422; constitutions should not be forced upon, 214–15; deserve a less ambiguous Constitution, 83, 244, 389, 459; distrust power in their leaders, 130–31; Federalists are out of touch with, 261–62; general welfare of is government end, 74–75, 170, 186, 265, 345, 444, 473; governments are reflections of, 349–51; have not what government can take away, 225; have right to design their government, 142; liberty depends on rather than parchment declarations, 114, 234, 337, 349–51, 376, 410–11, 427; must be trusted, 348–49; must codify their rights before surrendering their power, 311, 414; must surrender senses to submit to a national government, 433; must surrender some natural rights to secure the rest, 72, 73, 125, 217, 336, 421, 422, 432–33; need bill of rights to check corrupt leaders, 18, 20n, 73, 83, 84–85, 107, 158–59, 187, 232, 274, 340, 401–5, 404, 408, 414, 436, 447–48, 472; often misled by political writers, 38; only true check on government, 112, 113, 137–38, 295; republics require satisfaction of, 345; should trust competent leaders, 203–4, 246; tamely consent to serve the wealthy few, 181; will be protected by representation and checks not a bill of rights, 131–33, 164, 167, 168, 174, 191, 222, 228, 235, 280–81, 282–83, 345–55, 357, 363, 378–79, 415–16, 423–24; will remain in power under Constitution, 122, 151, 217, 241, 325, 378. *See also* Americans; Bill of rights; Happiness; Human nature; Liberty; Natural rights
PETERS, RICHARD (Philadelphia Co., Pa.): id., 502
PETITIONS: to Pa. Assembly against ratification of Constitution, 441n; to Pa. Assembly urging ratification of Constitution, 357–58
PETRIKIN, WILLIAM (Carlisle, Pa.): as "Aristocrotis," 35
"PHILADELPHIENSIS" (Benjamin Workman): authorship of, 368n; defends "Centinel," 22; praises "An Old Whig," 35; text of, 184, 210–11, 305, 367–68
"PHILANTHROPOS" (Tench Coxe): authorship of, 262; James Madison on, 262; text of, 262–64

"PHILODEMOS": text of, 439–40
PICKERING, TIMOTHY (Luzerne Co., Pa.), 98; criticizes "Federal Farmer," *Letters,* 100
PIERCE, WILLIAM (Chatham Co., Ga.): id., 502
—letter from, 379–81; response to, 401–3, 403n
PINCKNEY, CHARLES (Christ Church Parish, S.C.): id., 502
PINCKNEY, CHARLES COTESWORTH (St. Philip's and St. Michael's Parishes, Charleston, S.C.): id., 502
—speech of in S.C. House of Representatives, 266–67
"A PLAIN CITIZEN": text of, 133–35
"PLAIN TRUTH," 471, 475n; text of, 117–19, 292
"A PLANTER," 381n; text of, 401–3
"A PLEBEIAN" (Melancton Smith?): *An Address to the People of the State of New York,* 418–20, 467, 468n; authorship of, 418; criticizes "A Citizen of New-York," 418–20; criticizes "A Farmer," 316n; praises "Aristides," *Remarks,* 298, 316n; text of, 370–72, 419–20
PLUMER, WILLIAM (Epping, N.H.), 310
POETRY: *Poems, by William Cowper, of the Inner Temple,* 67, 68n; "Summer," *The Seasons* (James Thomson), 230, 231n; "The Raising: A New Song for Federal Mechanics," 220. *See also* Literary references; Satire
POLE, EDWARD (Philadelphia): receives "Federal Farmer," *Letters,* 99
POLITICAL AND LEGAL WRITERS AND WRITINGS: Earl of Abingdon (Willoughby Bertie), 413, 414n; John Adams, *Defence of the Constitutions,* 104, 105n, 278, 278n, 303, 304n; William Blackstone, *Commentaries,* 9, 62, 85–86, 118, 120, 121n, 160, 161n, 200–201, 381, 409, 427–28, 428–29n, 462, 484; Edmund Burke, 413, 414n; Lord Camden (Charles Pratt), 108, 109n; Edward Coke, 20n, 288, 290n, 352; Robert Filmer, 317, 324n; David Hume, *Essays, Moral, Political and Literary,* 296, 296n; John Locke, 106, 320; Jean Louis De Lolme, 452, 453, 454, 463, 464n; Machiavelli, 110, 110n, 345; Lord Mansfield (William Murray), 20n, 106; John Milton, 106; Montesquieu, *Spirit of Laws,* 65–66, 106, 207, 258, 261n, 297, 320, 432, 434n; William Paley, *Principles of Moral and Political Philosophy,* 296, 296n; Algernon Sydney, 106, 320; John Trenchard, 106; Voltaire, 433. *See also* Adams, John; Blackstone, William; Broadsides, pamphlets, and books; Classical antiquity; Great Britain, judiciary of; Literary references; Montesquieu, Charles, Baron de
POLITICAL CONDITIONS UNDER ARTICLES OF CONFEDERATION: too little government, 302; verge of anarchy, 125, 134; weak, 214. *See also* American Revolution; Articles of Confederation; Confederation Congress; United States
"POPLICOLA": answers "An Old Whig," 35
"PORTIUS": criticizes "Centinel," 110n; text of, 123–24
POST OFFICE, U.S.: and interception of Antifederalist letters, 64
POWARS, EDWARD E. (Boston/Worcester, Mass.): possible printer of "A Columbian Patriot," 343; prints "Federal Farmer," *Letters,* 99. *See also* Newspapers: Massachusetts and Maine, *American Herald*
POWER: Earl of Abingdon's three principles of, 413; amendments must be made while the people still have, 389–90; corrupting nature of, 18, 20n, 73, 83, 84–85, 274, 340, 403–5, 408, 436; humans are historically incapable of handling unlimited, 403–5; is rarely given back once obtained, 37, 138, 140, 391–92; liberty increases a nation's, 71, 306, 335–36, 340–41; limited is better than granting privileges, 365–66; must be checked against both rulers and the people, 303; over another is not a natural right, 74; proposed amendment declaring purpose and origin of, 444; people distrust in their leaders, 130–31; purpose of governmental, 265; religious orthodoxy masks thirst for, 88–89; is safe in the few if the many can reclaim it, 352–55; will flow from the people under Constitution, 122, 151; without a check will lead to tyranny, 185. *See also* Congress, U.S.; Corruption; Human nature; Officeholders, U.S.; The People; Sovereignty
PRESIDENT, U.S.: election of under Constitution praised, 48, 237; Constitution favors Senate and, 9, 431; criticism of treaty-making power of, 50, 193, 195, 473; danger of power of, 367–68; length of term of criticized, 158; limited power of, 372; re-eligibility of criticized, 226, 301, 302, 304–5, 390, 449, 481; re-eligibility of defended, 488; will have too much influence over Congress, 50
PRESS, FREEDOM OF THE: is despised by tyrants, 60–61, 199

—Constitution will endanger, 9, 19, 24, 37–38, 42n, 43, 49, 54, 63, 66, 68, 80–82, 105, 106, 115, 116, 126, 129, 148n, 171, 183, 207, 311, 336, 386, 387n, 419, 470; Congress has power to destroy, 92, 105; fundamental right that needs enumeration, 90, 308, 452, 463–64, 476; libel could be used under Constitution to restrict, 19, 20n, 43, 45n, 81–82, 183, 305, 470; proposed amendments protecting, 172, 393; proposed constitutional revision securing, 445; satire on loss of, 356; taxation could be used under Constitution to restrict, 486–87n
—Constitution will not endanger, 26, 27, 31, 34, 53, 90–91, 95, 111–12, 118, 122, 131, 136, 146, 149–50, 205–6, 221–22, 266–67, 295–96, 333, 409, 485–86, 486–87n; fundamental principle of free government, 243; no power is given to impose restrictions on press, 485, 486–87n; not protected in Articles of Confederation, 57; not protected in N.Y. constitution, 417, 418n, 420, 485; secured by state constitutions, 266–67
See also Bill of rights
PRINTERS, PUBLISHERS, AND BOOKSELLERS: can bend toward opinions of power, 85
See also Broadsides, pamphlets, and books; Libel; Magazines; Newspapers; Press, freedom of the; *Entries of individual printers, publishers, and booksellers:* Robert Aitken (Philadelphia); Thomas Allen (New York City); Francis Bailey (Philadelphia); Augustine Davis (Richmond, Va.); Thomas Greenleaf (New York City); John and Samuel Loudon (New York City); John M'Lean (New York City/Norfolk, Va.); Eleazer Oswald (Philadelphia); Edward E. Powars (Boston/Worcester, Mass.); John Peter Zenger (New York City), 43, 45n, 81–82
PROPERTY, PRIVATE: Constitution does not endanger, 333; Constitution endangers, 184; as fundamental right that needs enumeration, 452; is essential to liberty, 234–35; nearly as important as life, 402; occupancy is the origin of, 164; proposed amendment securing, 443
PROTESTANTS: seek religious tests, 196, 255, 309–10. *See also* Religion; Religious tests
PSEUDONYMS: "A.B.," 343; Agrippa (James Winthrop), 194–95, 255–56, 276–78, 292–94, 302–4; Alfredus (Samuel Tenney), 157n, 248, 267–71, 311n; Algernon Sidney, 312–13; Amendment, 393–94; America (Noah Webster), 220–25; An American, 488–89; An American (Tench Coxe), 7; An American Citizen (Tench Coxe), 56–58, 471, 475n; Americanus (John Stevens, Jr.), 4; Another Customer, 218–19; Anti-Cincinnatus, 79, 204–6; Antifederal Discoveries, 377; Aristides (Alexander Contee Hanson), 297–301, 314–24, 338–42, 359–64, 370, 372n, 388, 394–96, 432; Aristocrotis (William Petrikin), 35, 54; Atticus, 130–31; Brutus (Tobias Lear), 29, 73–78, 187–89; Brutus (Melancton Smith), 7, 78–79, 133, 265–66; Brutus, Junior, 133; Cæsar (Alexander Hamilton?), 4, 16, 45–46; Caroliniensis, 109n; Cassius (James Sullivan?), 7, 409–10; Cato (George Clinton?), 4, 5, 16, 45–46, 69, 100, 133; Centinel (George Bryan?), 133; Centinel (Samuel Bryan), 21–25, 40, 60–64, 69, 79, 83, 109–10, 111–14, 198, 377, 392–93; Cincinnatus (Arthur Lee), 26, 78–82, 105–9, 204; A Citizen, 59–60; A Citizen of America (Noah Webster), 79, 126–27; A Citizen of New-York (John Jay), 416–17, 418–20; A Citizen of Pennsylvania (Pelatiah Webster), 32–35; A Citizen of Philadelphia (Pelatiah Webster), 17, 52–53, 202n; A Citizen of the State of Maryland, 314–15, 412–14; A Citizen of the United States, 313–14; Civis Rusticus, 294–96; A Columbian Patriot (Mercy Otis Warren), 343–45; Conciliator, 243–45, 252, 256, 274–75, 312; A Confederationalist, 66–68; A Countryman, 203–4; A Countryman (DeWitt Clinton), 16; A Countryman (Hugh Hughes), 22; A Countryman (Roger Sherman), 131–33, 174; Curtiopolis, 100; Curtius, 4, 16; A Customer, 41–42; Dares, 332; A Democratic Federalist, 41–45, 69; Dentatus, 241; Detector, 22; Examiner, 4, 35; Fabius (John Dickinson), 420–24, 438–39; A Farmer, 338–42; A Farmer (Thomas Cogswell), 248, 249–51, 267–71; A Farmer (John Francis Mercer?), 298, 314–24, 338–42, 359–64, 370–71, 394–96, 431–34, 447; Federal Farmer, 96–105, 449–64, 467, 468n; A Federal Republican, 22, 42, 138–40; A Federalist, 184; The Federalist's Political Creed, 468–70; Foederal Constitution, 31, 67, 68n; A Freeholder, 410–12; A Freeman, 471, 475n; A Friend to Equal Liberty, 392–93; A Friend to Order, 42; A Friend to the Confederation, 124n; A Friend to the Rights of the People, 309–11; "G.," 121; A Gentleman of Distinction,

298; Giles Hickory (Noah Webster), 226–30, 345–55; Gomez, 35, 79; Hickory, 42; An Honest American, 252, 257–61, 274–75; Hum-Strum, 218; An Impartial Citizen, 7, 246–48; The Impartial Examiner, 330–31, 364–66; An Independent Freeholder (Alexander White?), 272–74; John De Witt, 72–73; Junius (James Sullivan?), 20n, 276–77; Landholder (Daniel of St. Thomas Jenifer?), 381–87; A Landholder (Oliver Ellsworth), 191–92; A Lunarian, 79; Lycurgus, 46; "M.," 90–91; A Man of No Party, 16, 22; Many Customers, 177–79; Marcus (James Iredell), 326–30; Mariot, 230–31; M.C., 69–70; Medium, 4; Montezuma, 46–50; A Native of Virginia, 7, 396–400; New England, 22, 97, 99; The New Roof (Francis Hopkinson), 218–19, 220; An Officer of the Late Continental Army (William Findley?), 26, 91–94, 117–19, 133; An Old Constitutionalist, 64; An Old Whig (George Bryan, James Hutchinson, and John Smilie?), 35–39, 40, 54–56, 69, 70–72, 87–90, 133, 140–44, 305–6; One of the Common People, 182–84; One of the Late Army, 126–27; One of the Middling-Interest, 144–48, 182–84; One of the People, 7, 209–10, 409, 410n; One of the Whigs of 1788, 22; A Pennsylvanian (Tench Coxe), 418; Philadelphiensis (Benjamin Workman), 22, 35, 184, 210–11, 305, 367–68; Philanthropos (Tench Coxe), 262–64; Philodemos, 439–40; A Plain Citizen, 133–35; Plain Truth, 117–19, 292, 471, 475n; A Planter, 381n, 401–3; A Plebeian (Melancton Smith?), 298, 316n, 370–72, 418–20, 467, 468n; Poplicola, 35; Portius, 110, 123–24; Publius *The Federalist* (Alexander Hamilton, James Madison, and John Jay), 99, 124n, 252–53, 327, 482–87, 488, 496; A Real Federalist, 298; Reflection, 368–69, 406, 409n, 471, 473–75, 475n; Remarker, 216–18; The Republican, 96–105, 233–38; "R.S.," 120–21; Rusticus, 419; Sly-Boots, 39–40; Sommers, 372–77; A Son of Liberty, 133; A Spectator, 22; The State Soldier (George Nicholas?), 7, 306–8, 326n; The Syren's Songs, 4; Thoughts at the Plough, 406–9; Timoleon, 23, 83–87, 133; A True Friend, 189–90; Truth, 136; Uncus, 22, 111–14; Valerius, 7, 148–50, 277n, 278–79; Verus Conciliator, 275; A Virginian, 22; Vox Populi, 127–28; "X.," 22; "Z.," 184–86. *See also* Broadsides, pamphlets, and books; *Entries for individual names*

PUBLIC GOOD: individuals must surrender some convenience for, 306; not highest priority of government leaders, 70; should be sought with least expense to liberty and safety, 444. *See also* General welfare; Happiness; The People

"PUBLIUS" *THE FEDERALIST* (Alexander Hamilton, James Madison, and John Jay): *See The Federalist*

PUNISHMENT, CRUEL AND UNUSUAL: criticism of Constitution's lack of prohibition of, 284, 305; defense of Constitution's lack of prohibition of, 223; proposed amendments protecting against, 172, 444–45. *See also* Bill of rights

QUAKERS: "Centinel" appeals to, 110, 110n; would benefit from Constitution's prohibition of religious tests, 110n. *See also* Conscientious objection; Religion, freedom of; Religious tests

QUARTERING OF SOLDIERS: prohibited in Mass. Declaration of Rights, 339; prohibition of fundamental right that needs enumeration, 452, 463. *See also* Army, standing; Bill of rights; Military

RAMSAY, DAVID (St. Philip's and St. Michael's Parishes, Charleston, S.C.): id., 502

—letter from, 115–17

—letter to, 415–16

RANDOLPH, BEVERLEY (Cumberland Co., Va.): id., 502–3

RANDOLPH, EDMUND (Henrico Co., Va.): id., 503; advocates second constitutional convention, 176, 208–9, 211, 214, 216; becomes supporter of Constitution, 405, 405n; as non-signer of Constitution, 3, 95, 96n, 233–34; praise of, 258, 374–75; proposes amendments via state conventions, 116

—reasons for not signing Constitution, 5, 211; 10 Oct. letter to Va. House of Delegates as pamphlet, 211–16; responses to 10 Oct. letter, 245–46, 258–59, 397; at variance with other Antifederalists, 262–64, 313, 337–38, 367

—letters from, 211–16

—letters to, 239–40, 245–46

RATIFICATION, PROCEDURE FOR: criticism that only nine states needed for ratification, 448–49; evolution of at Constitutional Convention, 383–84; proposal on that would allow for revision of Constitution, 142–44; should not be in haste, 38–39,

49–50, 51, 67, 123, 141. *See also* Constitutional Convention; Constitutional convention, second; Conventions, state
RATIFICATION, PROSPECTS FOR: doubtful with amendments, 12, 13, 58–59, 91, 121, 128, 194, 242, 244, 247–48, 406, 437; eight states are probable, 468; four states looking to Va., 465; George Washington on, 41; nine states promising, 435; seven states ratified, 480; Thomas Jefferson on, 481
"A REAL FEDERALIST": praises "Aristides," 298
"REFLECTION," 471, 475n; criticism of, 406, 409n, 473–75; text of, 368–69
RELIGION: Constitution's effect on Quakers, 110, 110n; government needs support of, 310; Pa. Constitutionalists seek to disenfranchise Quakers, 110n; Protestants' fear of Catholics, Muslims, Deists, and Atheists in office, 309–10. *See also* Religion, freedom of; Religious tests
RELIGION, FREEDOM OF: endangered by Constitution, 63, 88–89, 115, 148n, 186, 336; as fundamental right that needs enumeration, 199, 452; must be protected in bill of rights, 83–86, 103, 207, 225, 308; not endangered by Constitution, 110n, 136, 266, 289, 333; Pa. Declaration of Rights contradictions regarding, 241; proposed amendments protecting, 171, 393, 444. *See also* Bill of rights; Conscience, freedom of; Religion; Religious tests
RELIGIOUS TESTS: criticism of Constitution for not requiring, 196, 309–10; delegates to Mass. state convention instructed on, 255; eleven state constitutions include, 310n; praise of Constitution for not requiring, 122, 136; proposal requiring officeholders to affirm belief in God, 446; Protestants seeking, 110n, 196, 255, 309–10. *See also* Religion; Religion, freedom of
"REMARKER": text of, 216–18
REPRESENTATION: historical examples of, 448, 452–56
—criticized under Constitution, 50, 195, 431, 433, 448; America too vast and diverse for effective, 180–81, 199, 431–32; equal state representation in Senate, 313; for House of Representatives, 313; will lead to oligarchy, 9, 18
—praised under Constitution, 131–33, 164, 174, 191, 222, 228, 235–38, 282, 345–55, 371, 378, 415–16, 423, 426; equal state representation in Senate, 426; for House of Representatives, 9, 136, 235–36
See also Elections, U.S.; Government, debate over nature of; Taxation
"THE REPUBLICAN": "Federal Farmer," *Letters* addressed to, 96–105; text of, 233–38
"A REPUBLICAN FEDERALIST": text of, 261
REPUBLICAN FORM OF GOVERNMENT: America is too vast and diverse for a single republic, 180–81, 199, 431–32; can still be despotic, 330; Constitution's guarantee of to states criticized, 330; Constitution's guarantee of to states praised, 113, 122, 267, 269, 363; dependent on leaders of virtue and ability, 238, 258, 295; described, 300; favors factionalism, 402–3; needs protection against the majority, 303; prohibition of titles of nobility of as cornerstone of, 483. *See also* Elections, U.S.; Government, debate over nature of; House of Representatives, U.S.; Representation; States, impact of Constitution on
REQUISITIONS: Confederation Congress lacks power to collect, 281; inconsistent state compliance with, 134. *See also* Confederation Congress; Taxation
RESERVED POWERS: in Mass. recommendatory amendments, 326; proposed amendment guaranteeing to states, 394
—criticism of theory of, 54–55, 61–62, 65, 67–68, 80–82, 101–2, 106, 124, 156, 177n, 182, 208, 209, 239, 244, 249, 256, 293, 321–22, 330–31, 414, 456–60; equivalent on federal and state level, 456–57, 459; are explicit in Articles of Confederation, 42, 80, 140, 208, 208n, 331, 447, 457, 460; must be explicit in Constitution, 42, 80, 116, 140, 189, 208, 244, 256, 304, 331, 345, 447, 457, 460; partial bill of rights in Constitution disproves theory of, 78, 103, 239, 265, 456–57, 459–60
—support of theory of, 25–26, 31, 34, 113, 117, 145–46, 163, 165, 166–67, 188, 204–6, 217, 241, 257–61, 267–69, 272–74, 276, 289, 356, 365–66, 438, 485; fundamental principle of free government, 243; James Wilson introduces theory of, 25–26
See also Delegated powers; Enumerated powers; Government, debate over nature of; Implied powers; States, impact of Constitution on; Wilson, James
RHODE ISLAND: amendments proposed by resident of Providence, 393–94; concern over uncertainty of ratification by, 481; has no bill of rights, 155; referendum on Con-

stitution, 393, 394n; rejects Constitution, 480
RICH *vs.* POOR: wealthy few think they must govern, 181; wealthy must join with the people to survive, 262
—Constitution favors the rich, 46–50, 93–94, 104, 110, 210; judiciary favors wealthy, 85–86, 201–2, 401–2; rights secured in Constitution favor property owners, 447; wealthy hold advantages to obtaining office, 347
See also Aristocracy; Interests; The People; Property, private
RIGHTS: classification of, 451–52. *See also* Bill of rights; Liberty; Natural rights
ROTATION IN OFFICE: satire on lack of in Constitution, 46–47. *See also* Elections, U.S.; House of Representatives, U.S.; President, U.S.; Senate, U.S.
"R.S.": text of, 120–21
RUSH, BENJAMIN (Philadelphia): id., 503; as essayist, 80, 82n; possible letter from, 377–79, 379n
—letter from, 415–16
—letter to, 115–17
—speech of in Pa. Convention, 163–64
RUSSELL, BENJAMIN (Boston): counters "An Old Whig" with Federalist essays, 35; counters "Federal Farmer" with Federalist essays, 99
RUSSELL, WILLIAM (Providence, R.I.): on R.H. Lee's amendments to Constitution, 7
"RUSTICUS": defends "A Plebeian," 419

SALARIES: criticism of Congress setting its own, 251. *See also* Expenses of government; Officeholders, U.S.
SATIRE: "Cursory Remarks," 355–56, 356n; "A Dialogue between an Antifederalist and a Federalist," 471–75; "A Friend to Equal Liberty," 392–93; "Montezuma," 46–50. *See also* Literary references; Poetry
SCOTT, THOMAS (Washington Co., Pa.): id., 503
SEARCHES AND SEIZURES: colonial writs of assistance, 344–45, 345n; Constitution will not encourage general warrants, 361–62; danger of under Constitution, 63–64, 305, 344–45, 345n; in Pa. Declaration of Rights (1776), 24; prohibition of as fundamental right that needs enumeration, 90, 103–4, 452, 461–62; proposed amendments prohibiting, 172, 445. *See also* Bill of rights
SEDGWICK, THEODORE (Stockbridge, Mass.): id., 503
SELF-INCRIMINATION: proposed amendments protecting against, 172, 444. *See also* Bill of rights
SENATE, U.S.: praise of equal state representation in, 426; proposed amendment on biennual elections, 393
—criticisms: Constitution favors President and, 9; equal state representation in, 313; legislative and executive powers in, 277; length of term, 158, 481; treaty-making power of, 50, 193, 195, 473; will be aristocratic body, 21
See also Congress, U.S.; Impeachment; Separation of powers
SENEY, JOSHUA (Queen Anne's Co., Md.): id., 503
SEPARATION OF POWERS: under Constitution praised, 164, 226, 236, 280, 379, 423; criticism of Constitution's reliance on, 472; criticism of President and Senate connection in Constitution, 9, 431; as fundamental right that needs enumeration, 452; insufficient under Constitution, 101, 311; proposed amendment increasing, 173. *See also* Checks and balances; Congress, U.S.; Government, debate over nature of
SHAYS, DANIEL (Pelham, Mass.): criticized, 244
SHAYS'S REBELLION: as argument for Constitution, 135. *See also* Insurrections, domestic
SHERMAN, ROGER (New Haven, Conn.): id., 503; as author of "A Countryman," 133n
—letter from, 190–91
See also "A Countryman" (Roger Sherman)
SHIPBUILDING: Constitution will force Southern States into, 10. *See also* Commerce
SHIPPEN, WILLIAM, JR. (Philadelphia): on "An Old Whig," 35; on "Brutus" authorship, 78–79; and R.H. Lee's proposed amendments to Constitution, 6
SHORT, WILLIAM (Surry Co., Va./France): on authorship of "Cincinnatus," 79
—letter to, 115
SILVESTER, PETER (Kinderhook, N.Y.): id., 504
SINGLETARY, AMOS (Sutton, Mass.), 288, 289–90n
SINNICKSON, THOMAS (Salem, N.J.): id., 504
SLAVE TRADE: criticism of Constitution's clause concerning, 479. *See also* Slavery
SLAVERY: in ancient Rome, 454; Constitutional Convention concerned bill of rights would contradict, 267. *See also* Slave trade
"SLY-BOOTS": text of, 39–40

Smilie, John (Fayette Co., Pa.): id., 504; criticized, 356, 357n; as possible co-author of "An Old Whig" essays, 35
—speech of in Pa. Convention, 151–53, 156–57, 198
Smith, Melancton (New York City/Dutchess Co., N.Y.): id., 504; as Antifederalist leader, 15n; as author of "Brutus," 78–79; as possible author "A Plebeian," 418; supports R.H. Lee's amendments to Constitution, 13. *See also* "Brutus" (Melancton Smith)
Smith, Meriwether (Essex Co., Va.): and Edmund Randolph's objections to Constitution, 212
Smith, William Loughton (St. James's Parish, Goose Creek, S.C.): id., 504
Smith, William Stephens (Queens Co., N.Y.)
—letter to, 301–2
Social Compact: bill of rights necessary for balanced, 71, 74–78, 101–5, 139, 156, 195, 303, 408, 447; Constitution as, 27, 74, 77, 78, 100, 117, 156, 178, 359, 456; federal vs. state level compacts, 26, 33–34, 72–73, 125, 268–69; limited by delegated powers, 100, 300; must be balanced, 137–38, 422; people must codify their rights before entering into, 414; requires consensus, 100, 235, 354; rights of men as primary object of, 448; some natural rights are surrendered to establish, 72, 73, 125, 217, 336, 421, 422, 432–33; varies on extent of power given, 300. *See also* Delegated powers; Government, debate over nature of; Natural rights; Reserved powers
Society of Western Gentlemen: bill of rights proposed by, 443–45; revision of Constitution proposed by, 442–46
"Sommers": text of, 372–77
"A Son of Liberty": criticized, 133
South Carolina Constitution (1778): states that military is subordinate to civil authority, 339
South Carolina Convention: recommends amendments to Constitution, 475
South Carolina House of Representatives: bill of rights discussed in, 266–67
Sovereignty: Constitution will destroy state sovereignty, 21, 34, 50, 61–62, 63, 159–61, 180–81, 182–83, 198–203, 331, 390–91, 431–34; Constitution will not destroy state sovereignty, 280, 411, 423–24; people have supreme power thus bill of rights unnecessary, 122, 151, 217, 228, 241, 325, 378, 457, 484–86; proposed amendment declaring state sovereignty, 173; Union endangered by prideful sovereign states, 224. *See also* Congress, U.S.; Division of powers; Judiciary, U.S.; Liberty; The People; States, impact of Constitution on; Supremacy clause
"A Spectator": criticizes "Centinel," 22
Speech, Freedom of: Constitution does not endanger, 131, 333; as fundamental right that needs enumeration, 90, 452; in Pa. Declaration of Rights (1776), 24; proposed amendments securing, 172, 445. *See also* Bill of rights; Press, freedom of the
Spencer, Joseph (Orange Co., Va.): id., 504
—letter from, 336–37
Starke, Burwell (Dinwiddie Co., Va.): as possible author of "A Native of Virginia," 397
State Conventions: *See* Conventions, state
"The State Soldier" (George Nicholas?), 7, 326n; authorship of, 308n; text of, 306–8
States, Impact of Constitution on: guarantee of republican form of government for states criticized, 330; guarantee of republican form of government for states praised, 113, 122, 203, 363; restraints on states will secure domestic tranquility, 301; state sovereignty will be destroyed, 21, 34, 50, 61–62, 63, 159–61, 180–81, 182–83, 198–203, 331, 390–91, 431–34; state sovereignty will not be destroyed, 280, 411, 423–24; states will be less secure under Constitution, 180–81, 303–4, 323, 431–34; will confirm bill of rights of states, 136. *See also* Division of powers; Legislatures, state; Reserved powers; Supremacy clause; Taxation
States under the Articles of Confederation: on the brink of anarchy, 125, 134; economically distressed, 136, 254n, 260, 292; too disparate for a centralized government, 180–81, 199, 431–32. *See also* Articles of Confederation; Constitutions, state; *Entries for individual states*
Stevens, John, Jr. (Bergen Co., N.J.). *See* "Americanus"
Stone, Michael Jenifer (Charles Co., Md.): id., 504
Stone, Thomas (Charles Co., Md.), 15n
Stuart, Archibald (Augusta Co., Va.): id., 504
—letters from, 91, 179–80
—letter to, 193–94
Sullivan, John (Durham, N.H.): id., 504–5
Sumter, Thomas (District Eastward of Wateree, S.C.): id., 505

SUPREMACY CLAUSE: evolution of at Constitutional Convention, 382–83, 387n
—criticism of, 61–62, 67–68, 157, 182, 249, 365; will subordinate state bills of rights to Constitution, 30, 54–55, 78, 101–2, 126, 268, 382–83
—defense of, 113, 224–25, 299; as fundamental principle of free government, 243
See also Division of powers; Federalism; Judiciaries, state; Judiciary, U.S.; States, impact of Constitution on
SYMMES, WILLIAM, JR. (Andover, Mass.), 281
"THE SYREN'S SONGS": criticizes "Cato," 4

TAXATION: Congress' power over criticized, 83–84, 89–90, 159, 178; Congress' power over defended, 113, 131, 136, 280; could enable Congress to regulate the press, 486–87n; defense of direct taxation, 481, 481–82n; government expenses under Constitution would require oppressive, 184, 430; Mass. recommendatory amendment restricting direct taxation, 326; proposed amendment eliminating direct taxes, 172, 394. *See also* Appropriations; Congress, U.S.; Impost of 1781; Impost of 1783; Representation; Requisitions
TAYLOR, JOHN (Douglass, Mass./Smithfield, R.I.): id., 505
—speech of in Mass. Convention, 290
TELFAIR, EDWARD (Savannah, Ga.): id., 505
TENDER LAWS: praise of Constitution's prohibition of, 301
TENNEY, SAMUEL (Exeter, N.H.): id., 505; as author of "Alfredus," 248. *See also* "Alfredus"
THATCHER, GEORGE (Biddeford, Maine)
—letter to, 277
THOMAS, PHILIP (Frederick, Md.): praises "Aristides," 297–98
THOMPSON, SAMUEL (Topsham, Maine): id., 505
—speech of in Mass. Convention, 281
"THOUGHTS AT THE PLOUGH": text of, 406–9
THRUSTON, CHARLES MYNN (Frederick Co., Va.): and Edmund Randolph's objections to Constitution, 212
TILLINGHAST, CHARLES (New York City): and "Federal Farmer," *Letters*, 97, 98, 100
"TIMOLEON," 23; criticized, 133; text of, 83–87
TREASON: Constitution's provision against validates sufficient embedded bill of rights, 483; Constitution's provision on praised, 163, 168
TREATIES: cannot not be depended on for security, 260; criticism of treaty-making power under Constitution, 50–51, 193, 195, 473; defense of treaty-making power under Constitution, 206; proposed amendment restricting, 173. *See also* Senate, U.S.; President, U.S.
"A TRUE FRIEND": text of, 189–90
TRUMBULL, JOHN (Conn./London): id., 505
—letter from, 304–5
TRUMBULL, JONATHAN, JR. (Lebanon, Conn.)
—letter to, 304–5
"TRUTH": text of, 136
TUCKER, ST. GEORGE (Chesterfield Co., Va.), 397
—letter to, 379–81; cited, 401, 403n
TUCKER, THOMAS TUDOR (Charleston, S.C.): id., 505–6
TUFTS, COTTON (Weymouth, Mass.)
—letters to, 277–78, 311–12
TURBERVILLE, GEORGE LEE (Richmond Co., Va.): id., 506; regarding second constitutional convention, 175
—letter from, 193
TYRANNY: Americans are too accustomed to liberty to allow, 410; assurance of security is forerunner of, 404; bill of rights protects the people from, 87–90, 140, 336; can arise from rulers as well as the people, 303, 404; Constitution will lead to without bill of rights, 15, 82, 87–90, 140, 305, 336, 391–92, 430, 431–34, 448; Constitution will not lead to, 217, 292; ex post facto laws favorite instrument of, 483–84; hierarchy is the grand engine of, 186; is encouraged by the allure of power and glory, 436; "paper chains" are too feeble to stop, 337; power without a check will lead to, 185; representation and checks in Constitution will assure against, 131–33, 164, 168, 174, 191, 222, 228, 235, 280–81, 282, 346–49, 351, 353, 357, 378, 415–16, 423–24; tyrants despise a free press, 60–61; tyrants make their own laws, 235; will arise without Constitution, 15, 81, 134–35, 303, 325, 414. *See also* Despotism; Government, debate over nature of; Governments, ancient and modern

"UNCUS": criticizes "Centinel," 22; text of, 111–14
UNION: Constitution will strengthen, 59–60, 119, 240, 260, 261, 282, 367, 400–401, 412; endangered by prideful state sovereignty, 224; U.S. too vast and diverse for, 180–81,

199, 431–32. *See also* America; Civil war; United States
UNITED STATES: too vast and diverse for centralized government, 180–81, 199; will last for ages with a proper bill of rights, 183–84; would be better off under amended Articles of Confederation, 303, 323, 431–34, 436. *See also* America; Foreign opinion of the U.S.; Union

"VALERIUS," 7; authorship of, 277n; text of, 148–50, 278–79
VAN RENSSELAER, JEREMIAH (Albany Co., N.Y.): distributes "Federal Farmer," *Letters,* 98
VAN VECHTEN, ABRAHAM (Johnstown, N.Y.): distributes "Federal Farmer," *Letters,* 98
VARNUM, JOSEPH BRADLEY (Dracut, Mass.): id., 506
—speech of in Mass. Convention, 280–81
VAUGHAN, JOHN (Philadelphia): on "Fabius," 420, 424, 428n; identifies author of "A Citizen of New-York," 416
"VERUS CONCILIATOR": text of, 275
VICINAGE: *See* Jury trial
VINING, JOHN (Kent Co., Del.): id., 506
VIOLENCE: threat of without a second constitutional convention, 261, 440–42; used on Antifederalists to rush ratification, 20, 20n, 80, 82n. *See also* Civil war; Insurrections, domestic; Mobs; War
VIRGINIA CONSTITUTION (1776): is alterable, 345, 347
VIRGINIA CONVENTION, 476; address to members of by Md. Antifederalist, 446–49; R.H. Lee suggests amendments conditional after two years to, 466–67, 476–78, 478–79n; majority for amendments but divided on timing, 480; significance of for remaining four states, 465
VIRGINIA DECLARATION OF RIGHTS (1776), 155, 157n, 210n
VIRGINIA GENERAL ASSEMBLY: and a second constitutional convention, 175–76, 179–80
VIRGINIA HOUSE OF DELEGATES: set their own quorum during Revolution, 352–53
"A VIRGINIAN": criticizes "Centinel," 22
VIRTUE: Constitution with bill of rights will encourage, 176; Constitution relies too much on virtuous leaders, 185, 403–5; liberty depends on virtue rather than bill of rights, 237–38, 258, 295. *See also* Corruption; Human nature; Interests; Officeholders, U.S.; The People; Religion
"VOX POPULI": text of, 127–28
WADSWORTH, JEREMIAH (Hartford, Conn.): id., 506; on "Federal Farmer," *Letters,* 98–99
—letter to, 208–9
WAIT, THOMAS B. (Portland, Maine), 251n; id., 506
—letter from, 238–39
See also Newspapers: Massachusetts and Maine, *Cumberland Gazette*
WALKER, JAMES (Culpeper Co., Va.), 337n
WAR: Constitution is best defense against foreign threats, 119, 260, 400–401; justifiable only in self-defense, 251; numerous ills of, 251. *See also* American Revolution; Army, standing; Civil war; Europe; Foreign invasion; Governments, ancient and modern; Military; Violence
WARREN, MERCY OTIS (Milton, Mass.): id., 506; as author of "A Columbian Patriot," 343. *See also* "A Columbian Patriot"
WASHINGTON, GEORGE (Fairfax Co., Va.): id., 506; accused of being duped at Constitutional Convention, 22, 131; concern over re-eligibility of President abated by popularity of, 481; criticism of Federalists' overpraising, 374; criticized for promoting Constitution, 40, 135; on George Mason's objections to Constitution, 28, 29, 30–31; involvement in framing of Constitution questioned, 128; R.H. Lee's alleged animosity toward, 192; on R.H. Lee's proposed amendments to Constitution, 6, 7; significance of endorsement of Constitution by, 131, 325, 470; success in Revolution supports trust in competent leaders, 203–4; urged to accept presidency, 226; withholds authorship of "A Citizen of New-York," 416
—views of: against conditional amendments, 430–31; on Constitution as imperfect yet most favorable, 239–40; on jury trial in civil cases, 438; on leveraging bill of rights after ratification by nine states, 437; pleased by James Wilson's support of Constitution, 26, 29; praises Mass. ratification with recommendatory amendments, 437–38; praises reserved-power theory, 438; on prospects for ratification, 41; on transmitting Constitution to states, 14n
—circular letter (June 1783), 125n
—letters from, 41, 239–40, 309, 430–31, 437–38
—letters to, 12–15, 30–32, 226, 297, 302, 449
WAYNE TOWNSHIP, CUMBERLAND CO., PA.: petition from, 357–58

WEBB, SAMUEL BLACHLEY (New York City): on "A Citizen of New-York," 416, 417
WEBSTER, NOAH (Philadelphia/New York City): id., 507; as author of "America," 220–21; as editor of *American Magazine,* 226–27, 416, 418, 451; on "Federal Farmer," *Letters,* 100. *See also* "America"; "A Citizen of America"; "Giles Hickory"
WEBSTER, PELATIAH (Philadelphia): id., 507; as author of "A Citizen of Philadelphia," 17, 53. *See also* "A Citizen of Pennsylvania; "A Citizen of Philadelphia"
WESTERN TERRITORY: need for standing army in, 340; ordinances for the sale and governance of, 15n
WHITE, ALEXANDER (Winchester, Va.): id., 507; as possible author of "An Independent Freeholder," 272
—newspaper essays by, 331–35, 337–38
WHITE, JAMES (Hawkins Co., N.C.): id., 507
—letter from, 125
WHITEHILL, ROBERT (Cumberland Co., Pa.): id., 507; amendments submitted to Pa. Convention by, 171–74, 198; and George Mason's objections to Constitution, 28
—speeches of in Pa. Convention, 157–61, 171–74, 198
WIDGERY, WILLIAM (New Gloucester, Maine): id., 507
WILLIAMSON, HUGH (Edenton/Tyrrell Co., N.C.): id., 507–8
—speech of in Edenton, 94–96, 254n
WILSON, JAMES (Philadelphia): id., 508; criticism of, 26, 92–93, 131, 133, 441, 471; mob attacks home of, 92, 94n; praised, 162
—speech of 6 Oct., 3, 25–28; criticism of, 26, 41–45, 54, 60–64, 65, 79–82, 91–94, 105–9, 208, 310–11, 414, 456–57, 471; defended, 117–19, 139, 268, 269, 300, 329–30; quoted, 71, 73, 76, 92
—speeches of in Pa. Convention, 150–51, 154–56, 166–67, 167–69; letters to, 78–82, 105–9
See also Reserved powers
WINTHROP, JAMES (Cambridge, Mass.): *See* "Agrippa"
WITHERSPOON, DAVID (New Bern, N.C.): praises "Marcus," 328
WORKMAN, BENJAMIN (Philadelphia): id., 508; as author of "Philadelphiensis," 368n. *See also* "Philadelphiensis"

"X": criticizes "Centinel," 22

YATES, ABRAHAM, JR. (Albany, N.Y.): id., 508; as possible author of "Cato," 4; at variance with other Antifederalists, 313
YATES, PETER W. (Albany Co., N.Y.): id., 508
—letter from, 429–30
YEATES, JASPER (Lancaster Co., Pa.): id., 508
—speech of in Pa. Convention, 165

"Z": analysis of, 184–85; criticism of, 185; text of, 185–86
ZENGER, JOHN PETER (New York City): libel case, 43, 45n, 81–82