

Agrippa V, Massachusetts Gazette, 11 December 1787

To the PEOPLE.

In the course of inquiry it has appeared, that for the purposes of internal regulation and domestick tranquillity, our small and separate governments are not only admirably suited in theory, but have been remarkably successful in practice. It is also found, that the direct tendency of the proposed system, is to consolidate the whole empire into one mass, and, like the tyrant's bed, to reduce all to one standard. Though this idea has been started in different parts of the continent, and is the most important trait of this draft, the reasoning ought to be extensively understood. I therefore hope to be indulged in a particular statement of it.

Causes of all kinds, between citizens of different states, are to be tried before a continental court. This court is not bound to try it according to the local laws where the controversies happen; for in that case it may as well be tried in a state court. The rule which is to govern the new courts, must, therefore, be made by the court itself, or by its employers, the Congress. If by the former, the legislative and judicial departments will be blended; and if by the Congress, though these departments will be kept separate, still the power of legislation departs from the state in all those cases. The Congress, therefore, have the right to make rules for trying *all kinds of questions* relating to property between citizens of different states. The sixth article of the new constitution provides, that the continental laws shall be the supreme law of the land, and all judges in the separate states shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding. All the state officers are also bound by oath to support this constitution. These provisions cannot be understood otherwise than as binding the state judges and other officers, to execute the continental laws in their own proper departments within the state. For all questions, other than those between citizens of the same state, are at once put within the jurisdiction of the continental courts. As no authority remains to the state judges, but to decide questions between citizens of the same state, and those judges are to be bound by the laws of Congress, it clearly follows, that all questions between citizens of the same state are to be decided by the general laws and not by the local ones.

Authority is also given to the continental courts, to try all causes between a state and its own citizens. A question of property between these parties rarely occurs. But if such questions were more frequent than they are, the proper process is not to sue the state before an higher authority; but to apply to the supreme authority of the state, by way of petition. This is the universal practice of all states, and any other mode of redress destroys the sovereignty of the state over its own subjects. The only case of the kind in which the state would probably be sued, would be upon the state notes. The endless confusion that would arise from making the estates of individuals answerable, must be obvious to every one.

There is another sense in which the clause relating to causes between the state and individuals is to be understood, and it is more probable than the other, as it will be eternal in its duration, and increasing in its extent. This is the whole branch of the law relating to criminal prosecutions. In all such cases, the state is plaintiff, and the person accused is defendant. The

process, therefore, will be, for the attorney-general of the state to commence his suit before a continental court. Considering the state as a party, the cause must be tried in another, and all the expense of transporting witnesses incurred. The individual is to take his trial among strangers, friendless and unsupported, without its being known whether he is habitually a good or a bad man; and consequently with one essential circumstance wanting by which to determine whether the action was performed maliciously or accidentally. All these inconveniences are avoided by the present important restriction, that the cause shall be tried by a jury of the vicinity, and tried in the county where the offence was committed. But by the proposed *derangement*, I can call it by no softer name, a man must be ruined to prove his innocence. This is far from being a forced construction of the proposed form. The words appear to me not intelligible, upon the idea that it is to be a *system* of government, unless the construction now given, both for civil and criminal processes, be admitted. I do not say that it is intended that all these changes should take place within one year, but they probably will in the course of half a dozen years, if this system is adopted. In the mean time we shall be subject to all the horrors of a divided sovereignty, not knowing whether to obey the Congress or the state. We shall find it impossible to please two masters. In such a state frequent broils will ensue. Advantage will be taken of a popular commotion, and even the venerable forms of the state be done away, while the new system will be enforced in its utmost rigour, by an army. I am the more apprehensive of a standing army, on account of a clause in the new constitution which empowers Congress to keep one at all times; but this constitution is evidently such that it cannot stand any considerable time without an army. Upon this principle one is very wisely provided. Our present government knows of no such thing.

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