Federal Farmer, Letters to the Republican, 8 November 1787

The best Antifederalist writing on the Constitution 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*. This pamphlet consists of five numbered letters, dated 8, 9, 10, 12, and 13 October. Copies of three editions of the *Letters*, and possibly four, have been located. Since the place of publication and the name of the printer do not appear on the title pages of any of these extant copies, it is a matter of conjecture as to when, where, and by whom each edition was printed. Bibliographers have generally attributed the publication of these editions to Thomas Greenleaf of the *New York Journal*. However, an analysis of the texts of the extant copies, of the advertisements offering them for sale, and of other evidence suggests that two editions were published by one printer and that the third 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. Hodge, and T. Allen, Book-sellers, in Queen-street, and at Mr. Loudon's, Printing-Office, Water-street."

The authorship of the *Letters* had long been attributed to the well-known Revolutionary patriot Richard Henry Lee of Virginia, who was serving in the Confederation Congress in New York City at the time the letters were dated. This attribution was first made in a Federalist newspaper essay signed "New England" and published in the Hartford *Connecticut Courant* on 24 December 1787. Since the 1950s, scholars have effectively challenged Lee's authorship of the *Letters*, but only three of them. Robert H. Webking, Joseph Kent McGaughy, and John P. Kaminski, have suggested a substitute. Webking and McGaughy argue that Melancton Smith was the "Federal Farmer," while Kaminski recommends Elbridge Gerry of Massachusetts as a more likely choice.

LETTER II.

OCTOBER 9, 1787.

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

counties, and districts of the union, the appellate jurisdiction would be intolerable and expensive.

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

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

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

LETTER III.

OCTOBER 10th, 1787.

DEAR SIR, The great object of a free people must be so to form their government and laws and so to administer them as to create a confidence in, and respect for the laws; and thereby induce the sensible and virtuous part of the community to declare in favor of the laws...

...In the judicial department, powers ever kept distinct in well balanced governments, are no less improperly blended in the hands of the same men—in the judges of the supreme court is lodged, the law, the equity and the fact. It is not necessary to pursue the minute organical parts of the general government proposed.—There were various interests in the convention, to be reconciled, especially of large and small states; of carrying and non-carrying states: and of states more and states less democratic—vast laboured attention were by the convention bestowed on the organization of the parts of the constitution offered; still it is acknowledged, there are many things radically wrong in the essential parts of this constitution—but it is said, that these are the result of our situation:—On a full examination of the subject, I believe it; but what do the laborious inquiries and determinations of the convention prove? If they prove any thing, they prove that we cannot consolidate the states on proper principles: The organization of the government presented proves, that we cannot form a general government in which all power can be safely lodged; and a little attention to the parts of the one proposed will make it appear very evident, that all the powers proposed to be lodged in it, will not be then well deposited, either for the purposes of government, or the preservation of liberty. I will suppose no abuse of powers in those cases, in which the abuse of it is not well guarded against—I will suppose the words authorising the general government to regulate the elections of its own members struck out of the plan, or free district elections, in each state, amply secured.—That the small representation provided for shall be as fair and equal as it is capable of being made—I will suppose the judicial department regulated on pure principles, by future laws, as far as it can be by the constitution, and consist with the situation of the country—still there will be an unreasonable accumulation of powers in the general government, if all be granted, enumerated in the plan proposed. The plan does not present a well balanced government: The senatorial branch of the legislative and the executive are substantially united, and the president, or the first executive magistrate, may aid the senatorial interest when weakest, but never can effectually support the democratic, however it may be oppressed;—the excellency, in my mind, of a well balanced government is that it consists of distinct branches, each sufficiently strong and independant to keep its own station, and to aid either of the other branches which may occasionally want aid...

...There are some powers proposed to be lodged in the general government in the judicial department, I think very unnecessarily, I mean powers respecting questions arising upon the internal laws of the respective states. It is proper the federal judiciary should have powers coextensive with the federal legislature—that is, the power of deciding finally on the laws of the union. By Art. 3. Sect. 2. the powers of the federal judiciary are extended (among other things) to all cases between a state and citizens of another state—between citizens of different states—between a state or the citizens thereof, and foreign states, citizens or subjects. Actions in all these cases, except against a state government, are now brought and finally determined in the law courts of the states respectively; and as there are no words to exclude these courts of their jurisdiction in these cases, they will have concurrent jurisdiction with the inferior federal

courts in them; and, therefore, if the new constitution be adopted without any amendment in this respect, all those numerous actions, now brought in the state courts between our citizens and foreigners, between citizens of different states, by state governments against foreigners, and by state governments against citizens of other states, may also be brought in the federal courts; and an appeal will lay in them from the state courts, or federal inferior courts, to the supreme judicial court of the union. In almost all these cases, either party may have the trial by jury in the state courts; excepting paper money and tender laws, which are wisely guarded against in the proposed constitution; justice may be obtained in these courts on reasonable terms; they must be more competent to proper decisions on the laws of their respective states, than the federal courts can possibly be. I do not, in any point of view, see the need of opening a new jurisdiction to these causes—of opening a new scene of expensive law suits—of suffering foreigners, and citizens of different states, to drag each other many hundred miles into the federal courts. It is true, those courts may be so organized by a wise and prudent legislature, as to make the obtaining of justice in them tolerably easy; they may in general be organized on the common law principles of the country: But this benefit is by no means secured by the constitution. The trial by jury is secured only in those few criminal cases, to which the federal laws will extend—as crimes committed on the seas against the laws of nations, treason and counterfeiting the federal securities and coin: But even in these cases, the jury trial of the vicinage is not secured, particularly in the large states, a citizen may be tried for a crime committed in the state, and yet tried in some states 500 miles from the place where it was committed; but the jury trial is not secured at all in civil causes. Though the convention have not established this trial, it is to be hoped that congress, in putting the new system into execution, will do it by a legislative act, in all cases in which it can be done with propriety. Whether the jury trial is not excluded [in] the supreme judicial court, is an important question. By Art. 3. Sect. 2. all cases affecting ambassadors, other public ministers, and consuls, and in those cases in which a state shall be party, the supreme court shall have jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to LAW and FACT, with such exception, and under such regulations, as the congress shall make. By court is understood a court consisting of judges; and the idea of a jury is excluded. This court, or the judges, are to have jurisdiction on appeals, in all the cases enumerated, as to law and fact; the judges are to decide the law and try the fact, and the trial of the fact being assigned to the judges by the constitution, a jury for trying the fact is excluded; however, under the exceptions and powers to make regulations, Congress may, perhaps, introduce the jury, to try the fact in most necessary cases.

There can be but one supreme court in which the final jurisdiction will centre in all federal causes—except in cases where appeals by law shall not be allowed: The judicial powers of the federal courts extends in law and equity to certain cases: and, therefore, the powers to determine on the law, in equity, and as to the fact, all will concentre in the supreme court:—These powers, which by this constitution are blended in the same hands, the same judges, are in Great-Britain deposited in different hands—to wit, the decision of the law in the law judges, the decision in equity in the chancellor, and the trial of the fact in the jury. It is a very dangerous thing to vest in the same judge power to decide on the law, and also general powers in equity; for if the law restrain him, he is only to step into his shoes of equity, and give what

judgment his reason or opinion may dictate; we have no precedents in this country, as yet, to regulate the divisions as in equity in Great-Britain; equity, therefore, in the supreme court for many years, will be mere discretion. I confess in the constitution of the supreme court, as left by the constitution, I do not see a spark of freedom or a shadow of our own or the British common law.

This court is to have appellate jurisdiction in all the other cases before mentioned: Many sensible men suppose that cases before-mentioned respect, as well the criminal cases as the civil ones, mentioned antecedently in the constitution, if so an appeal is allowed in criminal cases—contrary to the usual sense of law. How far it may be proper to admit a foreigner or the citizen of another state to bring actions against state governments, which have failed in performing so many promises made during the war, is doubtful: How far it may be proper so to humble a state, as to bring it to answer to an individual in a court of law, is worthy of consideration; the states are now subject to no such actions; and this new jurisdiction will subject the states. and many defendants to actions, and processes, which were not in the contemplation of the parties, when the contract was made; all engagements existing between citizens of different states, citizens and foreigners, states and foreigners; and states and citizens of other states were made the parties contemplating the remedies then existing on the laws of the states—and the new remedy proposed to be given in the federal courts, can be founded on no principle whatever...

LETTER IV.

OCTOBER 12th, 1787.

DEAR SIR, It will not be possible to establish in the federal courts the jury trial of the vicinage so well as in the state courts...

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

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009.
Canonic URL: http://rotunda.upress.virginia.edu/founders/RNCN-02-19-02-0002-0075 [accessed 14 Jan 2013]
Original source: Ratification by the States, Volume XIX: New York, No. 1