Luther Martin: Genuine Information X, Baltimore *Maryland Gazette*, 1 February 1788

Mr. MARTIN'S *Information to the House of Assembly, continued*.

By the *third article*, the judicial power of the United States is vested in *one supreme court*, and in such *inferior courts*, as the Congress may from time to time ordain and establish.–These courts, and *these only*, will have a right to decide upon the laws of the United States, and all questions arising upon their construction, and in a judicial manner to carry those laws into execution; to which the courts both superior and inferior of the respective States and their judges and other magistrates are rendered incompetent.–To the courts of the general government are also *confined* all cases in law or equity, arising under the proposed constitution, and treaties made under the authority of the United States-all cases affecting ambassadors, other public ministers and consuls-all cases of admiralty and maritime jurisdiction-all controversies to which the United States are a party-all controversies between two or more States-between a State and citizens of another State-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.–Whether therefore, any *laws* or *regulations* of the *Congress*, or any *acts* of *its president* or *other officers* are *contrary to*, or not *warranted by* the constitution, rests *only* with the judges, who are *appointed* by Congress to *determine;* by whose determinations *every State* must be *bound*.–Should any question arise between a foreign consul and any of the citizens of the United States, however remote from the seat of empire, it is to be heard before the judiciary of the general government, and in the *first* instance to be heard in the supreme court, however inconvenient to the parties, and however trifling the subject of dispute.

Should the mariners of an American or foreign vessel, while in any American port, have occasion to sue for their wages, or in any other instance a controversy belonging to the admiralty jurisdiction should take place between them and their masters or owners, it is in the courts of the general government the suit must be instituted-and either party may carry it by appeal to its supreme court-the injury to commerce and the oppression to individuals which may thence arise need not be enlarged upon.–Should a citizen of Virginia, Pennsylvania, or any other of the United States be indebted to, or have debts due from, a citizen of this State, or any other claim be subsisting on one side or the other, in consequence of commercial or other transactions, it is only in the courts of Congress that either can apply for redress. The case is the same should any claims subsist between citizens of this State and foreigners, merchants, mariners and others, whether of a commercial or of any other nature, they must be prosecuted in the same courts; and though in the first instance they may be brought in the inferior, yet an appeal may be made to the supreme judiciary, even from the remotest State in the union.

The inquiry concerning, and trial of every offence against, and breach of the laws of Congress are also *confined* to its courts-the same courts also have the *sole* right to inquire concerning and try every offence, from the lowest to the highest, committed by the citizens of any other State, or of a foreign nation, against the laws of this State within its territory-and in *all these*

cases the decision may be ultimately brought before the supreme tribunal, since the *appellate jurisdiction* extends to *criminal* as well as to civil cases.

And in all those cases where the general government has jurisdiction in civil questions, the proposed constitution *not only* makes *no provision for the trial by jury* in the *first* instance, but by its appellate jurisdiction *absolutely takes away that inestimable priviledge*, since it expressly declares the supreme court shall have appellate jurisdiction both as to law and *fact*.–Should, therefore, a jury be adopted in the *inferior* court, it would only be a *needless expence*, since on an appeal the *determination* of that *jury even on questions of fact*, however honest and upright, is to be of *no possible effect*–the supreme court is to take up *all questions of fact*–to *examine the evidence relative* thereto-to *decide upon* them in the *same manner* as if they had *never been tried by a jury*–Nor is *trial by jury secured in criminal cases*; it is true, that in the first instance, in the inferior court the trial is to be by jury, in this and in this only, is the difference between criminal and civil cases; but, Sir, the *appellate jurisdiction extends*, as I have observed, to cases *criminal* as well as to civil, and on the *appeal* the *court* is to *decide not only* on the law but on the *fact*, if, therefore, *even* in *criminal* cases the general government is not satisfied with the verdict of the jury, its officer may remove the prosecution to the supreme court, and *there* the *verdict of the jury is to be of no effect*, but the *judges of this court* are to *decide upon the fact* as well as the law, the *same as in civil cases*.

Thus, Sir, *jury trials*, which have ever been the *boast* of the English constitution, which have been by our several *State constitutions* so *cautiously secured* to us,–*jury trials* which have so long been considered the *surest barrier* against *arbitrary power*, and the *palladium* of *liberty*,–with the *loss* of *which* the *loss* of our *freedom* may be dated, are *taken away* by the proposed form of government, not *only* in a *great variety* of questions between *individual* and *individual*, but in *every case* whether *civil* or *criminal* arising *under the laws of* the United States or the *execution* of those laws.–It is *taken away* in *those very cases* where of *all others* it is *most essential for our liberty*, to have it *sacredly guarded* and *preserved*–in *every case* whether *civil* or *criminal*, between *government* and *its officers* on the one part and the *subject or citizen* on the other.–Nor was this the effect of inattention, nor did it arise from any real difficulty in establishing and securing jury trials by the proposed constitution, if the convention had wished so to do–But the *same reason* influenced *here* as in the case of the establishment of inferior courts;–as they could not trust *State judges*, so would they not confide in *State juries*.–They alledged that the general government and the State governments would always be at variance-that the citizens of the different States would enter into the views and interests of their respective States, and therefore ought not to be trusted in determining causes in which the general government was any way interested, without giving the general government an opportunity, if it disapproved the verdict of the jury, to appeal, and to have the *facts examined* into *again* and *decided upon* by *its own judges*, on whom it was thought a reliance might be had by the general government, they being appointed under its authority.

Thus, Sir, in consequence of this *appellate jurisdiction* and its *extension to facts* as well as to law, every *arbitrary act* of the general government, and every *oppression* of all those *variety of officers* appointed under its authority for the *collection* of *taxes, duties, impost, excise*, and

other *purposes*, must be *submitted* to by the *individual*, or must be *opposed* with *little prospect* of *success* and *almost a certain prospect* of *ruin*, at least in those cases where the *middle* and *common class* of citizens are interested-Since to *avoid* that *oppression*, or to *obtain redress*, the application must be made to one of the courts of the United States-by good fortune should this application be in the *first* instance attended with success, and should damages be recovered equivalent to the injury sustained, an *appeal* lies to the *supreme court*, in which case the citizen must at once give up his cause, or he must attend to it at the distance of perhaps more than a thousand miles from the place of his residence, and must take measures to procure before that court on the appeal all the evidence necessary to support his action, which even if ultimately prosperous must be attended with a *loss of time*, a *neglect of business*, and an *expence* which will be *greater* than the *original grievance*, and *to which* men in *moderate* circumstances would be *utterly unequal*.

By the *third* section of this article it is declared that treason against the United States, shall consist in levying war against them, or in adhering to their enemies giving them aid or comfort.

By the *principles* of the American revolution, *arbitrary power may* and *ought* to be resisted even by *arms* if necessary–The time may come when it shall be the *duty* of a *State*, in order to preserve itself from the oppression of the general government, to have recourse to the sword–In which case the proposed form of government declares that the *State* and every of *its citizens* who *act under its authority* are guilty of a direct act of treason-reducing by this provision the different States to this alternative that they must *tamely* and *passively yield to despotism* or *their citizens* must *oppose it* at the *hazard* of the *halter* if unsuccessful-and reducing the citizens of the State which shall take arms to a situation in which they must be *exposed to punishment*, let them *act as they will*, since if they *obey* the authority of their *State government*, they will be *guilty of treason against* the *United States*–if they *join* the *general government* they will be *guilty of treason* against *their own State*.

To save the citizens of the respective States from this disagreeable dilemma, and to secure them from being punishable as *traitors* to the *United States* when *acting* expressly in *obedience* to the *authority of their own State*, I wished to have obtained as an amendment to the third section of this article the following clause: "Provided that no act or acts done by *one* or *more of the States* against the United States, or by *any citizen* of any *one* of the United States *under the authority* of *one* or *more of the said States*, shall be deemed *treason* or *punished as such*; but in case of war being levied by one or more of the States against the United States the conduct of each party towards the other, and their adherents respectively, shall be regulated by the *laws of war* and of *nations*."

But this provision was not adopted, being too much opposed to the great object of many of the leading members of the convention, which was by all means to *leave the States* at the *mercy* of the *general government*, since they could not succeed in their *immediate* and *entire* abolition.

(To be continued.)

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-03-16-02-0004 [accessed 14 Jan 2013]
Original source: Commentaries on the Constitution, Volume XVI: Commentaries on the Constitution, No. 4