

Richard Henry Lee to Edmund Pendleton, Chantilly, Va., 26 May 1788

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.>

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 am grieved to be forced to think, after the most mature consideration of the subject, that the proposed Constitution leaves the three essential Securities before stated, under the mere pleasure of the new Rulers! And why should it be so Sir, since the violation of these cannot be necessary to *good* government, but will be always extremely convenient for bad. It is a question deserving intense consideration, whether the State Sovereignties ought not to be supported, perhaps in the way proposed by Massachusetts in their 1st, 3d. & 4th Amendments. Force & Opinion seem to be the two ways alone by which Men can be governed—the latter appears the most proper for a free people—but remove that and obedience, I apprehend, can only be found to result from *fear* the Offspring of *force*. If this be so, can Opinion exist <among the great Mass of Mankind> without compitent knowledge of those who govern, and can that knowledge take

place in a Country so extensive as the territory of the U. States which is stated by Capt. Hutchins at a Million of square miles, whilst the empire of Germany contains but 192,000, and the kingdom of France but 163,000 square miles. The almost infinite variety of climates, Soils, productions, manners, customs & interests renders this still more difficult for the general government of one Legislature; but very practicable to Confederated States united for mutual safety & happiness, each contributing to the federal head such a portion of its sovereignty as would render the government fully adequate to these purposes and *No more*. The people would govern themselves more easily, the laws of each State being well adapted to its own genius and circumstances; the liberties of the U. States would probably be more secure than under the proposed plan, which, carefully attended to will be found capable of annihilating the State Sovereignties by finishing the operations of their State governments under the general Legislative right of commanding Taxes without restraint. So that the productive Revenues that the States may happily fall upon for their own support can be seized by superior power supported by the Congressional Courts of Justice, and by the sacred obligation of Oath imposed on all the State Judges to regard the laws of Congress as sup[reme?] over the laws and Constitutions of the States! Thus circumst[anced we?] shall probably find resistance vain, and the State governments as feeble and contemptible as was the Senatorial power under the Roman Emperors—The *name* existed but the *thing* was gone. 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 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. 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. 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!>

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