

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.

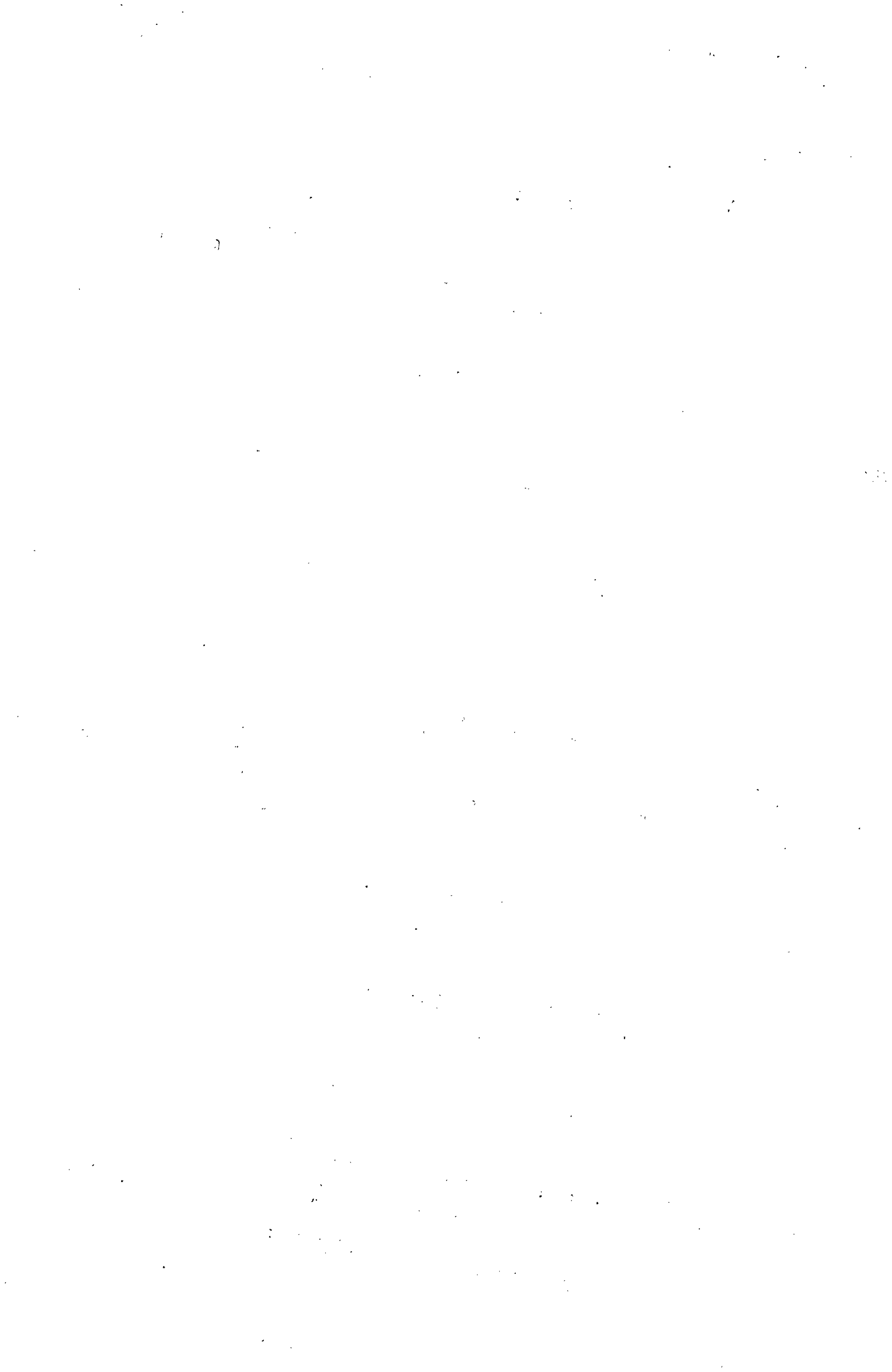
IN A NUMBER OF

LETTERS

FROM THE

FEDERAL FARMER TO THE REPUBLICAN.

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LETTERS FROM THE FEDERAL FARMER
TO THE
REPUBLICAN.

L E T T E R I.

OCTOBER 8th, 1787.

DEAR SIR,

MY letters to you last winter on the subject of a well balanced national government for the United States, were the result of free enquiry ; when I passed from that subject to enquiries relative to our commerce, revenues, past administration, &c. I anticipated the anxieties I feel, on carefully examining the plan of government proposed by the convention. It appears to be a plan retaining some federal features ; but to be the first important step, and to aim strongly to one consolidated government of the United States. It leaves the powers of government, and the representation of the people, so unnaturally divided between the general and state governments, that the operations of our system must be very uncertain. My uniform federal attachments, and the interest I have in the protection of property, and a steady execution of the laws, will convince you, that, if I am under any bias at all, it is in favor of any general system which shall promise those advantages. The instability of our laws increases my wishes for firm and steady government ; but then, I can consent to no government, which, in my opinion, is not calculated equally to preserve the rights of all orders of men in the community. My object has been to join with those who have endeavoured to supply the defects in the forms of our governments by a steady and proper administration of them. Though I have long apprehended that fraudulent debtors, and embarrassed men, on the one hand, and men, on the other, unfriendly to republican equality, would produce an uneasiness among the people, and prepare the way, not for cool and deliberate reforms in the governments, but for changes calculated to promote the interests of particular orders of men. Acquit me, sir, of any agency in the formation of the new system ; I shall be satisfied with seeing, if it shall be adopted, a prudent administration. Indeed I am so much convinced of the truth of Pope's maxim, that " That which is best
" administered

“administered is best,” that I am much inclined to subscribe to it from experience. I am not disposed to unreasonably contend about forms. I know our situation is critical, and it behoves us to make the best of it. A federal government of some sort is necessary. We have suffered the present to languish; and whether the confederation was capable or not originally of answering any valuable purposes, it is now but of little importance. I will pass by the men, and states, who have been particularly instrumental in preparing the way for a change, and, perhaps, for governments not very favourable to the people at large. A constitution is now presented which we may reject, or which we may accept, with or without amendments; and to which point we ought to direct our exertions, is the question. To determine this question with propriety, we must attentively examine the system itself, and the probable consequences of either step. This I shall endeavour to do, so far as I am able, with candor and fairness; and leave you to decide upon the propriety of my opinions, the weight of my reasons, and how far my conclusions are well drawn. Whatever may be the conduct of others, on the present occasion, I do not mean, hastily and positively to decide on the merits of the constitution proposed. I shall be open to conviction, and always disposed to adopt that which, all things considered, shall appear to me to be most for the happiness of the community. It must be granted, that if men hastily and blindly adopt a system of government, they will as hastily and as blindly be led to alter or abolish it; and changes must ensue, one after another, till the peaceable and better part of the community will grow weary with changes, tumults and disorders, and be disposed to accept any government, however despotic, that shall promise stability and firmness.

THE first principal question that occurs, is, Whether, considering our situation, we ought to precipitate the adoption of the proposed constitution? If we remain cool and temperate, we are in no immediate danger of any commotions; we are in a state of perfect peace, and in no danger of invasions; the state governments are in the full exercise of their powers; and our governments answer all present exigencies, except the regulation of trade, securing credit, in some cases, and providing for the interest, in some instances, of the public debts; and whether we adopt a change three or nine months hence, can make but little odds with the private circumstances of individuals; their happiness and prosperity, after all, depend principally upon their own exertions. We are hardly recovered from a long and distressing war: The farmers, fishermen, &c, have not yet fully repaired the waste made by it. Industry

dustry and frugality are again assuming their proper station. Private debts are lessened, and public debts incurred by the war have been, by various ways, diminished; and the public lands have now become a productive source for diminishing them much more. I know uneasy men, who wish very much to precipitate, do not admit all these facts; but they are facts well known to all men who are thoroughly informed in the affairs of this country. It must, however, be admitted, that our federal system is defective, and that some of the state governments are not well administered; but, then, we impute to the defects in our governments many evils and embarrassments which are most clearly the result of the late war. We must allow men to conduct on the present occasion, as on all similar one's. They will urge a thousand pretences to answer their purposes on both sides. When we want a man to change his condition, we describe it as miserable, wretched, and despised; and draw a pleasing picture of that which we would have him assume. And when we wish the contrary, we reverse our descriptions. Whenever a clamor is raised, and idle men get to work, it is highly necessary to examine facts carefully, and without unreasonably suspecting men of falshood, to examine, and enquire attentively, under what impressions they act. It is too often the case in political concerns, that men state facts not as they are, but as they wish them to be; and almost every man, by calling to mind past scenes, will find this to be true.

NOTHING but the passions of ambitious, impatient, or disorderly men, I conceive, will plunge us into commotions, if time should be taken fully to examine and consider the system proposed. Men who feel easy in their circumstances, and such as are not sanguine in their expectations relative to the consequences of the proposed change, will remain quiet under the existing governments. Many commercial and monied men, who are uneasy, not without just cause, ought to be respected; and, by no means, unreasonably disappointed in their expectations and hopes; but as to those who expect employments under the new constitution; as to those weak and ardent men who always expect to be gainers by revolutions, and whose lot it generally is to get out of one difficulty into another, they are very little to be regarded; and as to those who designedly avail themselves of this weakness and ardor, they are to be despised. It is natural for men, who wish to hasten the adoption of a measure, to tell us, now is the crisis—now is the critical moment which must be seized, or all will be lost; and to shut the door against free enquiry, whenever conscious the thing presented has defects in it, which time and investigation will probably discover. This has been the custom of tyrants,

rants and their dependants in all ages. If it is true, what has been so often said, that the people of this country cannot change their condition for the worse, I presume it still behoves them to endeavour deliberately to change it for the better. The fickle and ardent, in any community, are the proper tools for establishing despotic government. But it is deliberate and thinking men, who must establish and secure governments on free principles. Before they decide on the plan proposed, they will enquire whether it will probably be a blessing or a curse to this people.

THE present moment discovers a new face in our affairs. Our object has been all along, to reform our federal system, and to strengthen our governments—to establish peace, order and justice in the community—but a new object now presents. The plan of government now proposed is evidently calculated totally to change, in time, our condition as a people. Instead of being thirteen republics, under a federal head, it is clearly designed to make us one consolidated government. Of this, I think, I shall fully convince you, in my following letters on this subject. This consolidation of the states has been the object of several men in this country for some time past. Whether such a change can ever be effected in any manner; whether it can be effected without convulsions and civil wars; whether such a change will not totally destroy the liberties of this country—time only can determine.

To have a just idea of the government before us, and to shew that a consolidated one is the object in view, it is necessary not only to examine the plan, but also its history, and the politics of its particular friends.

THE confederation was formed when great confidence was placed in the voluntary exertions of individuals, and of the respective states; and the framers of it, to guard against usurpation, so limited and checked the powers, that, in many respects, they are inadequate to the exigencies of the union. We find, therefore, members of congress urging alterations in the federal system almost as soon as it was adopted. It was early proposed to vest congress with powers to levy an impost, to regulate trade, &c. but such was known to be the caution of the states in parting with power, that the vestment, even of these, was proposed to be under several checks and limitations. During the war, the general confusion, and the introduction of paper money, infused in the minds of people vague ideas respecting government and credit. We expected too much from the return of peace, and of course we have been disappointed. Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper money laws, have

have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government; and this very abuse of power in the legislatures, which, in some cases, has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which, in great measure, they are rapidly effecting their favourite object. And should an oppressive government be the consequence of the proposed change, posterity may reproach not only a few overbearing unprincipled men, but those parties in the states which have misused their powers.

THE conduct of several legislatures, touching paper money, and tender laws, has prepared many honest men for changes in government, which otherwise they would not have thought of—when by the evils, on the one hand, and by the secret instigations of artful men, on the other, the minds of men were become sufficiently uneasy, a bold step was taken, which is usually followed by a revolution, or a civil war. A general convention for mere commercial purposes was moved for—the authors of this measure saw that the people's attention was turned solely to the amendment of the federal system; and that, had the idea of a total change been started, probably no state would have appointed members to the convention. The idea of destroying, ultimately, the state government, and forming one consolidated system, could not have been admitted—a convention, therefore, merely for vesting in congress power to regulate trade was proposed. This was pleasing to the commercial towns; and the landed people had little or no concern about it. September, 1786, a few men from the middle states met at Annapolis, and hastily proposed a convention to be held in May, 1787, for the purpose, generally, of amending the confederation—this was done before the delegates of Massachusetts, and of the other states arrived—still not a word was said about destroying the old constitution, and making a new one—The states still unsuspecting, and not aware that they were passing the Rubicon, appointed members to the new convention, for the sole and express purpose of revising and amending the confederation—and, probably, not one man in ten thousand in the United States, till within these ten or twelve days, had an idea that the old ship was to be destroyed, and he put to the alternative of embarking in the new ship presented, or of being left in danger of sinking—The States, I believe, universally supposed the convention would report alterations in the confederation, which would pass an examination in congress, and after being agreed to there, would be confirmed by all the legislatures,
or

or be rejected. Virginia made a very respectable appointment; and placed at the head of it the first man in America: In this appointment there was a mixture of political characters; but Pennsylvania appointed principally those men who are esteemed aristocratical. Here the favourite moment for changing the government was evidently discerned by a few men, who seized it with address. Ten other states appointed, and tho' they chose men principally connected with commerce and the judicial department yet they appointed many good republican characters—had they all attended we should now see, I am persuaded a better system presented. The non-attendance of eight or nine men, who were appointed members of the convention, I shall ever consider as a very unfortunate event to the United States.— Had they attended, I am pretty clear, that the result of the convention would not have had that strong tendency to aristocracy now discernable in every part of the plan. There would not have been so great an accumulation of powers, especially as to the internal police of the country, in a few hands, as the constitution reported proposes to vest in them—the young visionary men, and the consolidating aristocracy, would have been more restrained than they have been. Eleven states met in the convention, and after four months close attention presented the new constitution, to be adopted or rejected by the people. The uneasy and fickle part of the community may be prepared to receive any form of government; but, I presume, the enlightened and substantial part will give any constitution presented for their adoption, a candid and thorough examination; and silence those designing or empty men, who weakly and rashly attempt to precipitate the adoption of a system of so much importance—We shall view the convention with proper respect—and, at the same time, that we reflect there were men of abilities and integrity in it, we must recollect how disproportionably the democratic and aristocratic parts of the community were represented.—Perhaps the judicious friends and opposers of the new constitution will agree, that it is best to let it rest solely on its own merits, or be condemned for its own defects.

In the first place, I shall premise, that the plan proposed is a plan of accommodation—and that it is in this way only, and by giving up a part of our opinions, that we can ever expect to obtain a government founded in freedom and compact. This circumstance candid men will always keep in view, in the discussion of this subject.

THE plan proposed appears to be partly federal, but principally however, calculated ultimately to make the states one consolidated government.

THE first interesting question, therefore suggested, is, how far

far the states can be consolidated into one entire government on free principles. In considering this question extensive objects are to be taken into view, and important changes in the forms of government to be carefully attended to in all their consequences. The happiness of the people at large must be the great object with every honest statesman, and he will direct every movement to this point. If we are so situated as a people, as not to be able to enjoy equal happiness and advantages under one government, the consolidation of the states cannot be admitted.

THERE are three different forms of free government under which the United States may exist as one nation; and now is, perhaps, the time to determine to which we will direct our views. 1. Distinct republics connected under a federal head. In this case the respective state governments must be the principal guardians of the peoples rights, and exclusively regulate their internal police; in them must rest the balance of government. The congress of the states, or federal head, must consist of delegates amenable to, and removeable by the respective states: This congress must have general directing powers; powers to require men and monies of the states; to make treaties; peace and war; to direct the operations of armies, &c. Under this federal modification of government, the powers of congress would be rather advisory or recommendatory than coercive. 2. We may do away the several state governments, and form or consolidate all the states into one entire government, with one executive, one judiciary, and one legislature, consisting of senators and representatives collected from all parts of the union: In this case there would be a complete consolidation of the states. 3. We may consolidate the states as to certain national objects, and leave them severally distinct independent republics, as to internal police generally. Let the general government consist of an executive, a judiciary, and balanced legislature, and its powers extend exclusively to all foreign concerns, causes arising on the seas to commerce, imports, armies, navies, Indian affairs, peace and war, and to a few internal concerns of the community; to the coin, post-offices, weights and measures, a general plan for the militia, to naturalization, *and, perhaps to bankruptcies*, leaving the internal police of the community, in other respects, exclusively to the state governments; as the administration of justice in all causes arising internally, the laying and collecting of internal taxes, and the forming of the militia according to a general plan prescribed. In this case there would be a complete consolidation, *quoad* certain objects only.

TOUCHING the first, or federal plan, I do not think much can be said in its favor: The sovereignty of the nation, without

coercive and efficient powers to collect the strength of it, cannot always be depended on to answer the purposes of government; and in a congress of representatives of sovereign states, there must necessarily be an unreasonable mixture of powers in the same hands.

As to the second, or complete consolidating plan, it deserves to be carefully considered at this time, by every American: If it be impracticable, it is a fatal error to model our governments, directing our views ultimately to it.

THE third plan, or partial consolidation, is, in my opinion, the only one that can secure the freedom and happiness of this people. I once had some general ideas that the second plan was practicable, but from long attention, and the proceedings of the convention, I am fully satisfied, that this third plan is the only one we can with safety and propriety proceed upon. Making this the standard to point out, with candor and fairness, the parts of the new constitution which appear to be improper, is my object. The convention appears to have proposed the partial consolidation evidently with a view to collect all powers ultimately, in the United States into one entire government; and from its views in this respect, and from the tenacity of the small states to have an equal vote in the senate, probably originated the greatest defects in the proposed plan.

INDEPENDANT of the opinions of many great authors, that a free elective government cannot be extended over large territories, a few reflections must evince, that one government and general legislation alone, never can extend equal benefits to all parts of the United States: Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded. The United States contain about a million of square miles, and in half a century will, probably, contain ten millions of people; and from the center to the extremes is about 800 miles.

BEFORE we do away the state governments, or adopt measures that will tend to abolish them, and to consolidate the states into one entire government, several principles should be considered and facts ascertained:—These, and my examination into the essential parts of the proposed plan, I shall pursue in my next.

YOUR'S, &c.

The FEDERAL FARMER.

[11]

L E T T E R II.

OCTOBER 9, 1787.

DEAR SIR,

THE essential parts of a free and good government are a full and equal representation of the people in the legislature, and the jury trial of the vicinage in the administration of justice—a full and equal representation, is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled—a fair representation, therefore, should be so regulated, that every order of men in the community, according to the common course of elections, can have a share in it—in order to allow professional men, merchants, traders, farmers, mechanics, &c. to bring a just proportion of their best informed men respectively into the legislature, the representation must be considerably numerous—We have about 200 state senators in the United States, and a less number than that of federal representatives cannot, clearly, be a full representation of this people, in the affairs of internal taxation and police, were there but one legislature for the whole union. The representation cannot be equal, or the situation of the people proper for one government only—if the extreme parts of the society cannot be represented as fully as the central—it is apparently impracticable that this should be the case in this extensive country—it would be impossible to collect a representation of the parts of the country five, six, and seven hundred miles from the seat of government.

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.

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, offices, 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

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.

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 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.

IN examining the proposed constitution carefully, we must clearly perceive an unnatural separation of these powers from the substantial representation of the people. The state governments will exist, with all their governors, senators, representatives, officers and expences; in these will be nineteen-twentieths of the representatives of the people; they will have a near connection, and their members an immediate intercourse with the people; and the probability is, that the state governments will possess the
confidence

confidence of the people, and be considered generally as their immediate guardians.

THE general government will consist of a new species of executive, a small senate, and a very small house of representatives. As many citizens will be more than three hundred miles from the seat of this government as will be nearer to it, its judges and officers cannot be very numerous, without making our governments very expensive. Thus will stand the state and the general governments, should the constitution be adopted without any alterations in their organization ; but as to powers, the general government will possess all essential ones, at least on paper, and those of the states a mere shadow of power. And therefore, unless the people shall make some great exertions to restore to the state governments their powers in matters of internal police ; as the powers to lay and collect, exclusively, internal taxes, to govern the militia, and to hold the decisions of their own judicial courts upon their own laws final, the balance cannot possibly continue long ; but the state governments must be annihilated, or continue to exist for no purpose.

It is however to be observed, that many of the essential powers given the national government are not exclusively given ; and the general government may have prudence enough to forbear the exercise of those which may still be exercised by the respective states. But this cannot justify the impropriety of giving powers, the exercise of which prudent men will not attempt, and imprudent men will, or probably can, exercise only in a manner destructive of free government. The general government, organized as it is, may be adequate to many valuable objects, and be able to carry its laws into execution on proper principles in several cases ; but I think its warmest friends will not contend, that it can carry all the powers proposed to be lodged in it into effect without calling to its aid a military force, which must very soon destroy all elective governments in the country, produce anarchy or establish despotism. Though we cannot have now a complete idea of what will be the operations of the proposed system, we may, allowing things to have their common course, have a very tolerable one. The powers lodged in the general government, if exercised by it, must intimately effect the internal police of the states, as well as external concerns ; and there is no reason to expect the numerous state governments, and their connections, will be very friendly to the execution of federal laws in those internal affairs, which hitherto have been under their own immediate management. There is more reason to believe, that the general government, far removed from the people, and none of its members elected oftener than once in two years, will be forgot
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or neglected, and its laws in many cases disregarded, unless a multitude of officers and military force be continually kept in view, and employed to enforce the execution of the laws, and to make the government feared and respected. No position can be truer than this, that in this country either neglected laws, or a military execution of them, must lead to a revolution, and to the destruction of freedom. Neglected laws must first lead to anarchy and confusion; and a military execution of laws is only a shorter way to the same point—despotic government.

YOUR'S, &c.

THE FEDERAL FARMER.

L E T T E R I I I .

O C T O B E R 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, and to support them without an expensive military force. I wish, though I confess I have not much hope, that this may be the case with the laws of congress under the new constitution. I am fully convinced that we must organize the national government on different principals, and make the parts of it more efficient, and secure in it more effectually the different interests in the community; or else leave in the state governments some powers propose to be lodged in it—at least till such an organization shall be found to be practicable. Not sanguine in my expectations of a good federal administration, and satisfied, as I am, of the impracticability of consolidating the states, and at the same time of preserving the rights of the people at large, I believe we ought still to leave some of those powers in the state governments, in which the people, in fact, will still be represented—to define some other powers proposed to be vested in the general government, more carefully, and to establish a few principles to secure a proper exercise of the powers given it. It is not my object to multiply objections, or to contend about inconsiderable powers or amendments; I wish the system adopted with a few alterations; but those, in my mind, are essential ones; if adopted without,

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every good citizen will acquiesce, though I shall consider the duration of our governments, and the liberties of this people, very much dependant on the administration of the general government. A wise and honest administration, may make the people happy under any government ; but necessity only can justify even our leaving open avenues to the abuse of power, by wicked, unthinking, or ambitious men. I will examine, first, the organization of the proposed government, in order to judge ; 2d. with propriety, what powers are improperly, at least prematurely lodged in it. I shall examine, 3d, the undefined powers ; and 4th. those powers, the exercise of which is not secured on safe and proper ground.

First. As to the organization—the house of representatives, the democratic branch, as it is called, is to consist of 65 members : that is, about one representative for fifty thousand inhabitants, to be chosen biennially—the federal legislature may increase this number to one for each thirty thousand inhabitants, abating fractional numbers in each state.—Thirty-three representatives will make a quorum for doing business, and a majority of those present determine the sense of the house.—I have no idea that the interests, feelings, and opinions of three or four millions of people, especially touching internal taxation, can be collected in such a house.—In the nature of things, nine times in ten, men of the elevated classes in the community only can be chosen—Connecticut, for instance, will have five representatives—not one man in a hundred of those who form the democratic branch in the state legislature, will, on a fair computation, be one of the five—The people of this country, in one sense, may all be democratic ; but if we make the proper distinction between the few men of wealth and abilities, and consider them, as we ought, as the natural aristocracy of the country, and the great body of the people, the middle and lower classes, as the democracy, this federal representative branch will have but very little democracy in it, even this small representation is not secured on proper principles.—The branches of the legislature are essential parts of the fundamental compact, and ought to be so fixed by the people, that the legislature cannot alter itself by modifying the elections of its own members. This, by a part of Art. 1. Sect. 4. the general legislature may do, it may evidently so regulate elections as to secure the choice of any particular description of men.—It may make the whole state one district—make the capital, or any places in the state, the place or places of election—it may declare that the five men (or whatever the number may be the state may chuse) who shall have the most votes shall be considered as chosen.—In this case

case it is easy to perceive how the people who live scattered in the inland towns will bestow their votes on different men—and how a few men in a city, in any order or profession, may unite and place any five men they please highest among those that may be voted for—and all this may be done constitutionally, and by those silent operations, which are not immediately perceived by the people in general.—I know it is urged, that the general legislature will be disposed to regulate elections on fair and just principles :—This may be true—good men will generally govern well with almost any constitution : but why in laying the foundation of the social system, need we unnecessarily leave a door open to improper regulations ?—This is a very general and unguarded clause, and many evils may flow from that part which authorises the congress to regulate elections.—Were it omitted, the regulations of elections would be solely in the respective states, where the people are substantially represented ; and where the elections ought to be regulated, otherwise to secure a representation from all parts of the community, in making the constitution, we ought to provide for dividing each state into a proper number of districts, and for confining the electors in each district to the choice of some men, who shall have a permanent interest and residence in it ; and also for this essential object, that the representative elected shall have a majority of the votes of those electors who shall attend and give their votes.

IN considering the practicability of having a full and equal representation of the people from all parts of the union, not only distances and different opinions, customs, and views, common in extensive tracts of country, are to be taken into view, but many differences peculiar to Eastern, Middle, and Southern states. These differences are not so perceivable among the members of congress, and men of general information in the states, as among the men who would properly form the democratic branch. The Eastern states are very democratic, and composed chiefly of moderate freeholders ; they have but few rich men and no slaves ; the Southern states are composed chiefly of rich planters and slaves ; they have but few moderate freeholders, and the prevailing influence, in them, is generally a dissipated aristocracy : The Middle states partake partly of the Eastern, and partly of the Southern character.

PERHAPS, nothing could be more disjointed, unweildly and incompetent to doing business with harmony and dispatch, than a federal house of representatives properly numerous for the great objects of taxation, &c. collected from the several states ; whether such men would ever act in concert ; whether they would not worry along a few years, and then be the means of

separating the parts of the union, is very problematical?—
View this system in whatever form we can, propriety brings us still to this point, a federal government possessed of general and complete powers, as to those national objects which cannot well come under the cognizance of the internal laws of the respective states, and this federal government, accordingly, consisting of branches not very numerous.

The house of representatives is on the plan of consolidation, but the senate is intirely on the federal plan; and Delaware will have as much constitutional influence in the senate, as the largest state in the union: and in this senate are lodged legislative, executive and judicial powers: Ten states in this union urge that they are small states, nine of which were present in the convention.—They were interested in collecting large powers into the hands of the senate, in which each state still will have its equal share of power. I suppose it was impracticable for the three large states, as they were called, to get the senate formed on any other principles: But this only proves, that we cannot form one general government on equal and just principles—and proves, that we ought not to lodge in it such extensive powers before we are convinced of the practicability of organizing it on just and equal principles. The senate will consist of two members from each state, chosen by the state legislatures, every sixth year. The clause referred to, respecting the elections of representatives, empowers the general legislature to regulate the elections of senators also, “except as to the places of chusing senators.”—There is, therefore, but little more security in the elections than in those of representatives: Fourteen senators make a quorum for business, and a majority of the senators present give the vote of the senate, except in giving judgment upon an impeachment, or in making treaties, or in expelling a member, when two-thirds of the senators present must agree.—The members of the legislature are not excluded from being elected to any military offices, or any civil offices, except those created, or the emoluments of which shall be increased by themselves: two-thirds of the members present, of either house, may expel a member at pleasure. The senate is an independant branch of the legislature, a court for trying impeachments, and also a part of the executive, having a negative in the making of all treaties, and in appointing almost all officers.

The vice president is not a very important, if not an unnecessary part of the system—he may be a part of the senate at one period, and act as the supreme executive magistrate at another.—The election of this officer, as well as of the president of the United States seems to be properly secured; but when

when we examine the powers of the president, and the forms of the executive, we shall perceive that the general government, in this part, will have a strong tendency to aristocracy, or the government of the few. The executive is, in fact, the president and senate in all transactions of any importance; the president is connected with, or tied to the senate; he may always act with the senate, but never can effectually counteract its views: The president can appoint no officer, civil or military, who shall not be agreeable to the senate; and the presumption is, that the will of so important a body will not be very easily controuled, and that it will exercise its powers with great address.

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 labour and 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

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.

THE convention found that any but a small house of representatives would be expensive, and that it would be impracticable to assemble a large number of representatives. Not only the determination of the convention in this case, but the situation of the states, proves the impracticability of collecting, in any one point, a proper representation.

THE formation of the senate, and the smallness of the house, being, therefore, the result of our situation, and the actual state of things, the evils which may attend the exercise of many powers in this national government may be considered as without a remedy.

ALL officers are impeachable before the senate only—before the men by whom they are appointed, or who are consenting to the appointment of these officers. No judgment of conviction, on an impeachment, can be given unless two thirds of the senators agree. Under these circumstances the right of impeachment, in the house, can be of but little importance; the house cannot expect often to convict the offender; and, therefore, probably, will but seldom or never exercise the right. In addition to the insecurity and inconveniences attending this organization beforementioned, it may be observed, that it is extremely difficult to secure the people against the fatal effects of corruption and influence. The power of making any law will be in the president, eight senators, and seventeen representatives, relative to the important objects enumerated in the constitution. Where there is a small representation a sufficient number to carry any measure, may, with ease, be influenced by bribes, offices and civilities; they may easily form private juntoes, and out door meetings, agree on measures, and carry them by silent votes.

Impressed, as I am, with a sense of the difficulties there are in the way of forming the parts of a federal government on proper principles, and seeing a government so unsubstantially organized, after so arduous an attempt has been made, I am led to believe, that powers ought to be given to it with great care and caution.

In the second place it is necessary, therefore, to examine the extent, and the probable operations of some of those extensive

tenfive powers proposed to be vested in this government. These powers, legislative, executive, and judicial, respect internal as well as external objects. Those respecting external objects, as all foreign concerns, commerce, imposts, all causes arising on the seas, peace and war, and Indian affairs, can be lodged nowhere else, with any propriety, but in this government. Many powers that respect internal objects ought clearly to be lodged in it; as those to regulate trade between the states, weights and measures, the coin or current monies, post-offices, naturalization, &c. These powers may be exercised without essentially effecting the internal police of the respective states: But powers to lay and collect internal taxes, to form the militia, to make bankrupt laws, and to decide on appeals, questions arising on the internal laws of the respective states, are of a very serious nature, and carry with them almost all other powers. These taken in connection with the others, and powers to raise armies and build navies, proposed to be lodged in this government, appear to me to comprehend all the essential powers in the community, and those which will be left to the states will be of no great importance.

A power to lay and collect taxes at discretion, is, in itself, of very great importance. By means of taxes, the government may command the whole or any part of the subject's property. Taxes may be of various kinds; but there is a strong distinction between external and internal taxes. External taxes are impost duties, which are laid on imported goods; they may usually be collected in a few seaport towns, and of a few individuals, though ultimately paid by the consumer; a few officers can collect them, and they can be carried no higher than trade will bear, or smuggling permits—that in the very nature of commerce, bounds are set to them. But internal taxes, as poll and land taxes, excises, duties on all written instruments, &c. may fix themselves on every person and species of property in the community; they may be carried to any lengths, and in proportion as they are extended, numerous officers must be employed to assess them, and to enforce the collection of them. In the United Netherlands the general government has complete powers, as to external taxation; but as to internal taxes, it makes requisitions on the provinces. Internal taxation in this country is more important, as the country is so very extensive. As many assessors and collectors of federal taxes will be above three hundred miles from the seat of the federal government as will be less. Besides, to lay and collect internal taxes, in this extensive country, must require a great number of congressional ordinances, immediately operating upon the body of the people; these must continually interfere with the state laws,
and

and thereby produce disorder and general dissatisfaction, till the one system of laws or the other, operating upon the same subjects, shall be abolished. These ordinances alone, to say nothing of those respecting the militia, coin, commerce, federal judiciary, &c. &c. will probably soon defeat the operations of the state laws and governments.

Should the general government think it politic, as some administrations (if not all) probably will, to look for a support in a system of influence, the government will take every occasion to multiply laws, and officers to execute them, considering these as so many necessary props for its own support. Should this system of policy be adopted, taxes more productive than the impost duties will, probably, be wanted to support the government, and to discharge foreign demands, without leaving anything for the domestic creditors. The internal sources of taxation then must be called into operation, and internal tax laws and federal assessors and collectors spread over this immense country. All these circumstances considered, is it wise, prudent, or safe, to vest the powers of laying and collecting internal taxes in the general government, while imperfectly organized and inadequate; and to trust to amending it hereafter, and making it adequate to this purpose? It is not only unsafe but absurd to lodge power in a government before it is fitted to receive it? It is confessed that this power and representation ought to go together. Why give the power first? Why give the power to the few, who, when possessed of it, may have address enough to prevent the increase of representation? Why not keep the power, and, when necessary, amend the constitution, and add to its other parts this power, and a proper increase of representation at the same time? Then men who may want the power will be under strong inducements to let in the people, by their representatives, into the government, to hold their due proportion of this power. If a proper representation be impracticable, then we shall see this power resting in the states, where it at present ought to be, and not inconsiderately given up.

When I recollect how lately congress, conventions, legislatures, and people contended in the cause of liberty, and carefully weighed the importance of taxation, I can scarcely believe we are serious in proposing to vest the powers of laying and collecting internal taxes in a government so imperfectly organized for such purposes. Should the United States be taxed by a house of representatives of two hundred members, which would be about fifteen members for Connecticut, twenty-five for Massachusetts, &c. still the middle and lower classes of people could have no great share, in fact, in taxation. I am aware it is said, that the representation proposed by the new constitution

constitution is sufficiently numerous ; it may be for many purposes ; but to suppose that this branch is sufficiently numerous to guard the rights of the people in the administration of the government, in which the purse and sword is placed, seems to argue that we have forgot what the true meaning of representation is. I am sensible also, that it is said that congress will not attempt to lay and collect internal taxes ; that it is necessary for them to have the power, though it cannot probably be exercised.——I admit that it is not probable that any prudent congress will attempt to lay and collect internal taxes, especially direct taxes : but this only proves, that the power would be improperly lodged in congress, and that it might be abused by imprudent and designing men.

I have heard several gentlemen, to get rid of objections to this part of the constitution, attempt to construe the powers relative to direct taxes, as those who object to it would have them ; as to these, it is said, that congress will only have power to make requisitions, leaving it to the states to lay and collect them. I see but very little colour for this construction, and the attempt only proves that this part of the plan cannot be defended. By this plan there can be no doubt, but that the powers of congress will be complete as to all kinds of taxes whatever—Further, as to internal taxes, the state governments will have concurrent powers with the general government, and both may tax the same objects in the same year ; and the objection that the general government may suspend a state tax, as a necessary measure for the promoting the collection of a federal tax, is not without foundation.——As the states owe large debts, and have large demands upon them individually, there clearly would be a propriety in leaving in their possession exclusively, some of the internal sources of taxation, at least until the federal representation shall be properly increased : The power in the general government to lay and collect internal taxes, will render its powers respecting armies, navies and the militia, the more exceptionable. By the constitution it is proposed that congress shall have power “ to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years ; to provide and maintain a navy ; to provide for calling forth the militia to execute the laws of the union ; suppress insurrections, and repel invasions : to provide for organizing, arming, and disciplining the militia : reserving to the states the right to appoint the officers, and to train the militia according to the discipline prescribed by congress ; congress will have unlimited power to raise armies, and to engage officers and men for any number of years ; but a legislative act applying money for their support can have operation for no longer term than two years, and if a subsequent congress do

not within the two years renew the appropriation, or further appropriate monies for the use of the army, the army will be left to take care of itself. When an army shall once be raised for a number of years, it is not probable that it will find much difficulty in getting congress to pass laws for applying monies to its support. I see so many men in America fond of a standing army, and especially among those who probably will have a large share in administering the federal system: it is very evident to me, that we shall have a large standing army as soon as the monies to support them can be possibly found. An army is a very agreeable place of employment for the young gentlemen of many families. A power to raise armies must be lodged some where; still this will not justify the lodging this power in a bare majority of so few men without any checks; or in the government in which the great body of the people, in the nature of things, will be only nominally represented. In the state governments the great body of the people, the yeomanry, &c. of the country, are represented: It is true they will chuse the members of congress, and may now and then chuse a man of their own way of thinking; but it is impossible for forty, or thirty thousand people in this country, one time in ten to find a man who can possess similar feelings, views, and interests with themselves: Powers to lay and collect taxes and to raise armies are of the greatest moment; for carrying them into effect, laws need not be frequently made, and the yeomanry, &c. of the country ought substantially to have a check upon the passing of these laws; this check ought to be placed in the legislatures, or at least, in the few men the common people of the country, will, probably, have in congress, in the true sense of the word, "from among themselves". It is true, the yeomanry of the country possess the lands, the weight of property, possess arms, and are too strong a body of men to be openly offended—and, therefore, it is urged, they will take care of themselves, that men who shall govern will not dare pay any disrespect to their opinions. It is easily perceived, that if they have not their proper negative upon passing laws in congress, or on the passage of laws relative to taxes and armies, they may in twenty or thirty years be by means imperceptible to them, totally deprived of that boasted weight and strength: This may be done in a great measure by congress, if disposed to do it, by modelling the militia. Should one fifth, or one eighth part of the men capable of bearing arms, be made a select militia, as has been proposed, and those the young and ardent part of the community, possessed of but little or no property, and all the others put upon a plan that will render them of no importance, the former will answer all the purposes of an army,

army, while the latter will be defenceless. The state must train the militia in such form and according to such systems and rules as congress shall prescribe: and the only actual influence the respective states will have respecting the militia will be in appointing the officers. I see no provision made for calling out the *posse comitatus* for executing the laws of the union, but provision is made for congress to call forth the militia for the execution of them—and the militia in general, or any select part of it, may be called out under military officers, instead of the sheriff to enforce an execution of federal laws, in the first instance and thereby introduce an entire military execution of the laws. I know that powers to raise taxes, to regulate the military strength of the community on some uniform plan, to provide for its defence and internal order, and for duly executing the laws, must be lodged somewhere; but still we ought not so to lodge them, as evidently to give one order of men in the community, undue advantages over others; or commit the many to the mercy, prudence, and moderation of the few. And so far as it may be necessary to lodge any of the peculiar powers in the general government, a more safe exercise of them ought to be secured, by requiring the consent of two-thirds or three-fourths of congress thereto—until the federal representation can be increased, so that the democratic members in congress may stand some tolerable chance of a reasonable negative, in behalf of the numerous, important, and democratic part of the community.

I AM not sufficiently acquainted with the laws and internal police of all the states to discern fully, how general bankrupt laws, made by the union, would effect them, or promote the public good. I believe the property of debtors, in the several states, is held responsible for their debts in modes and forms very different. If uniform bankrupt laws can be made without producing real and substantial inconveniences, I wish them to be made by congress.

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 co-extensive 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

D. determined

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. If it 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 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 beforementioned, 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 centre 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 in equity as in Great Britain; equity, therefore, in the supreme court for many years will be mere discretion. I confess in the constitution of this 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 oblige 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

and the new remedy proposed to be given in the federal courts, can be founded on no principle whatever.

Your's &c.

THE FEDERAL FARMER.

L E T T E R I V.

OCTOBER 12th, 1778.

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.

Third. There appears to me to be not only a premature deposit of some important powers in the general government—but many of those deposited there are undefined, and may be used to good or bad purposes as honest or designing men shall prevail. By Art. 1, Sect. 2, representatives and direct taxes shall be apportioned among the several states, &c.—same art. sect. 8, the congress shall have powers to lay and collect taxes, duties, &c. for the common defence and general welfare, but all duties, imposts and excises, shall be uniform throughout the United States: By the first recited clause, direct taxes shall be apportioned on the states. This seems to favour the idea suggested by some sensible men and writers, that congress, as to direct taxes, will only have power to make requisitions; but the latter clause, power to lay and collect taxes, &c. seems clearly to favour the contrary opinion and, in my mind, the true one, that congress shall have power to tax immediately individuals, without the intervention of the state legislatures in fact the first clause appears to me only to provide that each state shall pay a certain portion of the tax, and the latter to provide that congress shall have power to lay and collect taxes, that is to assess upon, and to collect of the individuals in the state, the states quota; but these still I consider as undefined powers, because judicious men understand them differently.

It is doubtful whether the vice president is to have any qualifications; none are mentioned; but he may serve as president, and it may be inferred, he ought to be qualified therefore as the president; but the qualifications of the president are required only of the person to be elected president. By art. the 2, sect. 2. "But the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of the departments:" Who are inferior officers? May not a congress disposed to vest the appointment of all officers in the president,

under

under this clause, vest the appointment of almost every officer in the president alone, and destroy the check mentioned in the first part of the clause, and lodged in the senate. It is true, this check is badly lodged, but then some check upon the first magistrate in appointing officers, ought it appears by the opinion of the convention, and by the general opinion, to be established in the constitution. By art. 3, sect. 2, the supreme court shall have appellate jurisdiction as to law and facts with such exceptions, &c. to what extent is it intended the exceptions shall be carried—Congress may carry them so far as to annihilate substantially the appellate jurisdiction, and the clause be rendered of very little importance.

4th. THERE are certain rights which we have always held sacred in the United States, and recognized in all our constitutions, and which, by the adoption of the new constitution in its present form, will be left unsecured. By article 6, the proposed 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.

It is to be observed that when the people shall adopt the proposed constitution it will be their last and supreme act; it will be adopted not by the people of New-Hampshire, Massachusetts, &c. but by the people of the United States; and wherever this constitution, or any part of it, shall be incompatible with the ancient customs, rights, the laws or the constitutions heretofore established in the United States, it will entirely abolish them and do them away: And not only this, but the laws of the United States which shall be made in pursuance of the federal constitution will be also supreme laws, and wherever they shall be incompatible with those customs, rights, laws or constitutions heretofore established, they will also entirely abolish them and do them away.

By the article before recited, treaties also made under the authority of the United States, shall be the supreme law; It is not said that these treaties shall be made in pursuance of the constitution—nor are there any constitutional bounds set to those who shall make them: The president and two thirds of the senate will be empowered to make treaties indefinitely, and when these treaties shall be made, they will also abolish all laws and state constitutions incompatible with them. This power in the president and senate is absolute, and the judges will be bound to allow full force to whatever rule, article or thing the president and senate shall establish by treaty, whether it be
practicable

practicable to set any bounds to those who make treaties, I am not able to say : if not, it proves that this power ought to be more safely lodged.

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 unalienable 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 inumerating 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 is to 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

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 *ex post facto* laws, the convention has done the same in one case, and gone further in another. It is a part of the compact

compact between the people of each state and their rulers, that no *ex post 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 *ex post 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

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 offices 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 sentinels 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.

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;

importance; but there are others, no doubt, which ought to be established as a fundamental part of the national system.

It is worthy observation, that all treaties are made by foreign nations with a confederacy of thirteen states—that the western country is attached to thirteen states—thirteen states have jointly and severally engaged to pay the public debts.—Should a new government be formed of nine, ten, eleven, or twelve states, those treaties could not be considered as binding on the foreign nations who made them. However, I believe the probability to be, that if nine states adopt the constitution, the others will.

It may also be worthy our examination, how far the provision for amending this plan, when it shall be adopted, is of any importance. No measures can be taken towards amendments, unless two-thirds of the congress, or two-thirds of the legislatures of the several states shall agree.—While power is in the hands of the people, or democratic part of the community, more especially as at present, it is easy, according to the general course of human affairs, for the few influential men in the community, to obtain conventions, alterations in government, and to persuade the common people they may change for the better, and to get from them a part of the power: But when power is once transferred from the many to the few, all changes become extremely difficult; the government, in this case, being beneficial to the few, they will be exceedingly artful and adroit in preventing any measures which may lead to a change; and nothing will produce it, but great exertions and severe struggles on the part of the common people. Every man of reflection must see, that the change now proposed, is a transfer of power from the many to the few, and the probability is, the artful and ever active aristocracy, will prevent all peaceable measures for changes, unless when they shall discover some favourable moment to increase their own influence. I am sensible, thousands of men in the United States, are disposed to adopt the proposed constitution, though they perceive it to be essentially defective, under an idea that amendments of it, may be obtained when necessary. This is a pernicious idea, it argues a servility of character totally unfit for the support of free government; it is very repugnant to that perpetual jealousy respecting liberty, so absolutely necessary in all free states, spoken of by Mr. Dickinson.—However, if our countrymen are so soon changed, and the language of 1774, is become odious to them, it will be in vain to use the language of freedom, or to attempt to rouse them to free enquiries: But I shall never believe this is the case with them, whatever present appearances may be, till I shall have very strong evidence indeed of it.

YOUR'S, &c.

THE FEDERAL FARMER.

L E T T E R V.

OCTOBER 13th, 1787.

DEAR SIR,

THUS I have examined the federal constitution as far as a few days leisure would permit. It opens to my mind a new scene; instead of seeing powers cautiously lodged in the hands of numerous legislators, and many magistrates, we see all important powers collecting in one centre, where a few men will possess them almost at discretion. And instead of checks in the formation of the government, to secure the rights of the people against the usurpations of those they appoint to govern, we are to understand the equal division of lands among our people, and the strong arm furnished them by nature and situation, are to secure them against those usurpations. If there are advantages in the equal division of our lands, and the strong and manly habits of our people, we ought to establish governments calculated to give duration to them, and not governments which never can work naturally, till that equality of property, and those free and manly habits shall be destroyed; these evidently are not the natural basis of the proposed constitution. No man of reflection, and skilled in the science of government, can suppose these will move on harmoniously together for ages, or even for fifty years. As to the little circumstances commented upon, by some writers, with applause—as the age of a representative, of the president, &c.—they have, in my mind, no weight in the general tendency of the system.

THERE are, however, in my opinion, many good things in the proposed system. It is founded on elective principles, and the deposits of powers in different hands, is essentially right. The guards against those evils we have experienced in some states in legislation are valuable indeed; but the value of every feature in this system is vastly lessened for the want of that one important feature in a free government, a representation of the people. Because we have sometimes abused democracy, I am not among those men who think a democratic branch a nuisance; which branch shall be sufficiently numerous, to admit some of the best informed men of each order in the community into the administration of government.

WHILE the radical defects in the proposed system are not so soon discovered, some temptations to each state, and to many classes of men to adopt it, are very visible. It uses the democratic language of several of the state constitutions, particularly that of Massachusetts; the eastern states will receive advantages so far as the regulation of trade, by a bare majority, is committed to it: Connecticut and New-Jersey will receive their share of a
general

general impost : The middle states will receive the advantages surrounding the seat of government : The southern states will receive protection, and have their negroes represented in the legislature, and large back countries will soon have a majority in it. This system promises a large field of employment to military gentlemen, and gentlemen of the law ; and in case the government shall be executed without convulsions, it will afford security to creditors, to the clergy, salary-men and others depending on money payments. So far as the system promises justice and reasonable advantages, in these respects, it ought to be supported by all honest men : but whenever it promises unequal and improper advantages to any particular states, or orders of men, is ought to be opposed.

I HAVE, in the course of these letters observed, that there are many good things in the proposed constitution, and I have endeavoured to point out many important defects in it. I have admitted that we want a federal system—that we have a system presented, which, with several alterations may be made a tolerable good one—I have admitted there is a well founded uneasiness among creditors and mercantile men. In this situation of things, you ask me what I think ought to be done ? My opinion in this case is only the opinion of an individual, and so far only as it corresponds with the opinions of the honest and substantial part of the community, is it entitled to consideration. Though I am fully satisfied that the state conventions ought most seriously to direct their exertions to altering and amending the system proposed before they shall adopt it—yet I have not sufficiently examined the subject, or formed an opinion, how far it will be practicable for those conventions to carry their amendments. As to the idea, that it will be in vain for those conventions to attempt amendments, it cannot be admitted ; it is impossible to say whether they can or not until the attempt shall be made ; and when it shall be determined, by experience, that the conventions cannot agree in amendments, it will then be an important question before the people the of United States, whether they will adopt or not the system proposed in its present form. This subject of consolidating the states is new : and because forty or fifty men have agreed in a system, to suppose the good sense of this country, an enlightened nation, must adopt it without examination, and though in a state of profound peace, without endeavouring to amend those parts they perceive are defective, dangerous to freedom, and destructive of the valuable principles of republican government—is truly humiliating. It is true there may be danger in delay ; but there is danger in adopting the system in its present form ; and I see the danger in either case will arise principally from the conduct and views of

two very unprincipled parties in the United States—two fires, between which the honest and substantial people have long found themselves situated. One party is composed of little insurgents, men in debt, who want no law, and who want a share of the property of others ; these are called levellers, Shayites, &c. The other party is composed of a few, but more dangerous men, with their servile dependents ; these avariciously grasp at all power and property ; you may discover in all the actions of these men, an evident dislike to free and equal government, and they will go systematically to work to change, essentially, the forms of government in this country ; these are called aristocrats, m—ites, &c. &c. Between these two parties is the weight of the community ; the men of middling property, men not in debt on the one hand, and men, on the other, content with republican governments, and not aiming at immense fortunes, offices, and power. In 1786, the little insurgents, the levellers, came forth, invaded the rights of others, and attempted to establish governments according to their wills. Their movements evidently gave encouragement to the other party, which, in 1787 has taken the political field, and with its fashionable dependants, and the tongue and the pen, is endeavouring to establish in great haste, a politer kind of government. These two parties, which will probably be opposed or united as it may suit their interests and views, are really insignificant, compared with the solid, free, and independent part of the community. It is not my intention to suggest, that either of these parties, and the real friends of the proposed constitution, are the same men. The fact is, these aristocrats support and hasten the adoption of the proposed constitution, merely because they think it is a stepping stone to their favorite object. I think I am well founded in this idea ; I think the general politics of these men support it, as well as the common observation among them, That the proffered plan is the best that can be got at present, it will do for a few years, and lead to something better. The sensible and judicious part of the community will carefully weigh all these circumstances ; they will view the late convention as a respectable assembly of men—America probably never will see an assembly of men of a like number, more respectable. But the members of the convention met without knowing the sentiments of one man in ten thousand in these states, respecting the new ground taken. Their doings are but the first attempts in the most important scene ever opened. Though each individual in the state conventions will not, probably, be so respectable as each individual in the federal convention, yet as the state conventions will probably consist of fifteen hundred or two thousand men of abilities, and versed in the science of government,

vernment, collected from all parts of the community and from all orders of men, it must be acknowledged that the weight of respectability will be in them—In them will be collected the solid sense and the real political character of the country. Being revisers of the subject, they will possess peculiar advantages. To say that these conventions ought not to attempt, coolly and deliberately, the revision of the system, or that they cannot amend it, is very foolish or very assuming. If these conventions, after examining the system, adopt it, I shall be perfectly satisfied, and wish to see men make the administration of the government an equal blessing to all orders of men. I believe the great body of our people to be virtuous and friendly to good government, to the protection of liberty and property; and it is the duty of all good men, especially of those who are placed as centinels to guard their rights—it is their duty to examine into the prevailing politics of parties, and to disclose them—while they avoid exciting undue suspicions, to lay facts before the people, which will enable them to form a proper judgment. Men who wish the people of this country to determine for themselves, and deliberately to fit the government to their situation, must feel some degree of indignation at those attempts to hurry the adoption of a system, and to shut the door against examination. The very attempts create suspicions, that those who make them have secret views, or see some defects in the system, which, in the hurry of affairs, they expect will escape the eye of a free people.

WHAT can be the views of those gentlemen in Pennsylvania, who precipitated decisions on this subject? What can be the views of those gentlemen in Boston, who countenanced the Printers in shutting up the press against a fair and free investigation of this important system in the usual way. The members of the convention have done their duty—why should some of them fly to their states—almost forget a propriety of behaviour, and precipitate measures for the adoption of a system of their own making? I confess candidly, when I consider these circumstances in connection with the unguarded parts of the system I have mentioned, I feel disposed to proceed with very great caution, and to pay more attention than usual to the conduct of particular characters. If the constitution presented be a good one, it will stand the test with a well informed people: all are agreed there shall be state conventions to examine it; and we must believe it will be adopted, unless we suppose it is a bad one, or that those conventions will make false divisions respecting it. I admit improper measures are taken against the adoption of the system as well for it—all who object to the plan proposed ought to point out the defects

fects objected to, and to propose those amendments with which they can accept it, or to propose some other system of government, that the public mind may be known, and that we may be brought to agree in some system of government, to strengthen and execute the present, or to provide a substitute. I consider the field of enquiry just opened, and that we are to look to the state conventions for ultimate decisions on the subject before us; it is not to be presumed, that they will differ about small amendments, and lose a system when they shall have made it substantially good; but touching the essential amendments, it is to be presumed the several conventions will pursue the most rational measures to agree in and obtain them; and such defects as they shall discover and not remove, they will probably notice, keep them in view as the ground work of future amendments, and in the firm and manly language which every free people ought to use, will suggest to those who may hereafter administer the government, that it is their expectation, that the system will be so organized by legislative acts, and the government so administered, as to render those defects as little injurious as possible. Our countrymen are entitled to an honest and faithful government; to a government of laws and not of men; and also to one of their choosing—as a citizen of the country, I wish to see these objects secured, and licentious, assuming, and overbearing men restrained; if the constitution or social compact be vague and unguarded, then we depend wholly upon the prudence, wisdom and moderation of those who manage the affairs of government; or on what, probably, is equally uncertain and precarious, the success of the people oppressed by the abuse of government, in receiving it from the hands of those who abuse it, and placing it in the hands of those who will use it well.

In every point of view, therefore, in which I have been able, as yet, to contemplate this subject, I can discern but one rational mode of proceeding relative to it: and that is to examine it with freedom and candour, to have state conventions some months hence, which shall examine coolly every article, clause, and word in the system proposed, and to adopt it with such amendments as they shall think fit. How far the state conventions ought to pursue the mode prescribed by the federal convention of adopting or rejecting the plan in toto, I leave it to them to determine. Our examination of the subject hitherto has been rather of a general nature. The republican characters in the several states, who wish to make this plan more adequate to security of liberty and property, and to the duration of the principles of a free government, will, no doubt, collect their opinions to certain points, and accurately define those alterations

alterations and amendments they wish ; if it shall be found they essentially disagree in them, the conventions will then be able to determine whether to adopt the plan as it is, or what will be proper to be done.

UNDER these impressions, and keeping in view the improper and unadvisable lodgment of powers in the general government, organized as it at present is, touching internal taxes, armies and militia, the elections of its own members, causes between citizens of different states, &c. and the want of a more perfect bill of rights, &c. I drop the subject for the present, and when I shall have leisure to revise and correct my ideas respecting it, and to collect into points the opinions of those who wish to make the system more secure and safe, perhaps I may proceed to point out particularly for your consideration, the amendments which ought to be ingrafted into this system, not only in conformity to my own, but the deliberate opinions of others--you will with me perceive, that the objections to the plan proposed may, by a more leisure examination be set in a stronger point of view, especially the important one, that there is no substantial representation of the people provided for in a government in which the most essential powers, even as to the internal police of the country, is proposed to be lodged.

I think the honest and substantial part of the community will wish to see this system altered, permanency and consistency given to the constitution we shall adopt ; and therefore they will be anxious to appertion the powers to the features and organization of the government, and to see abuse in the exercise of power more effectually guarded against. It is suggested, that state officers, from interested motives will oppose the constitution presented—I see no reason for this, their places in general will not be effected, but new openings to offices and places of profit must evidently be made by the adoption of the constitution in its present form.

YOUR'S, &c.

THE FEDERAL FARMER.

To the REPUBLICAN.

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