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A Native of Virginia: *Observations upon the Proposed Plan of Federal Government*, 2 April 1788 (excerpt)

. . . ARTICLE II.

Sect. 1. *The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:*

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote, by ballot, for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately chuse, by ballot, one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner chuse the President. But in chusing the President, the votes shall be taken by States, the Representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors, shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall chuse from them, by ballot, the Vice-President.

It has been urged by many, that the President should be continued in office, only a given number of years, and then be rendered ineligible. To this it may be answered, were that to be the case, a good officer might be displaced, and a bad one succeed. Knowing that he could not be continued, he might be more attentive to enrich himself, should opportunities offer, than to the execution of his office. But as his continuance in office, will depend upon his discharging the duties of it with ability, and integrity, his eligibility will most probably be the best security for his conduct. The longer a man of abilities and virtue, fills an office, the better, and easier

will the duties of it be discharged: The whole system of administration becomes well arranged; and every department in the government well filled. An election to this office once in every four years, is a sufficient curb upon the President: The Electors hold the reins. If he has misconducted himself, he will not be re-elected; if [he] has governed with prudence, and ability, he ought to be continued.

The Vice-President will probably be a candidate to succeed the President. The former will therefore be a perpetual centinel over the latter; will be a stimulus to keep him up to his duty, and afford an additional security for his upright conduct.

Notwithstanding these reasons, and the powerful checks opposed to the powers of the President, the enemies of the Constitution has sounded the alarm with great violence, upon the ground of his eligibility for life. Some tell us that it will be the means of his becoming the hereditary sovereign of the United States; whilst others hold up to our view the dangers of an elective monarchy.

It is pretty certain that the President can never become the sovereign of America, but with the voluntary consent of the people: He is re-elected by them; not by any body of men over whom he may have gained an undue influence. No citizen of America has a fortune sufficiently large, to enable him to raise and support a single regiment. The President's salary will be greatly inadequate either to the purpose of gaining adherents, or of supporting a military force: He will possess no princely revenues, and his personal influence will be confined to his native State. Besides, the Constitution has provided, that no person shall be eligible to the office, who is not thirty-five years old; and in the course of nature very few fathers leave a son who has arrived to that age. The powers of the President are not kingly, any more than the ensigns of his office. He has no guards, no regalia, none of those royal trappings which would set him apart from the rest of his fellow citizens. Suppose the first President should be continued for life: What expectations can any man in the Union have to succeed him, except such as are grounded upon the popularity of his character?

None of its citizens possess distinct principalities, from whence money may be drawn to purchase, or armies raised to intimidate the votes. Fortunately for America, she has no neighbouring Princess to interfere in her elections, or her councils: No Empress of Russia to place the Crown upon the head of her favorite Powniatowsky.^{(a) 1}

It has also been objected, that a Council of State ought to have been assigned the President.² The want of it, is, in my apprehension, a perfection rather than a blemish. What purpose would such a Council answer, but that of diminishing, or annihilating the responsibility annexed to the character of the President. From the superiority of his talents, or the superior dignity of his place, he would probably acquire an undue influence over, and might induce a majority of them to advise measures injurious to the welfare of the States, at the same time that he would have the means of sheltering himself from impeachment, under that majority. I will here once for all observe, that descended as we are from the English, conversant as we are in the political history of that country, it is impossible not to derive both political opinions, and prejudices, from that source. The objectors probably considered, that as in the English government, the first Magistrate has a Council of State; there should be one also in the American. But they should at the same time have recollected, that the King of England is not personally responsible for his conduct; but that her Constitution looks up to his Ministers, that is, to his Council, to answer for the

measures of the Sovereign. But in the American Constitution, the first Magistrate is the efficient Minister of the people, and as such, ought to be alone responsible for his conduct. Let him act pursuant to the dictates of his own judgment; let him advise with his friends; let him consult those of whom he has the highest opinion for wisdom; but let not his responsibility be diminished by giving him a Council.

The Congress may determine the time of chusing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend, the Constitution of the United States."

The first of these clauses is intended to prevent intrigue and tumult in chusing the Electors: And the reasons already offered, why Congress should have the right of altering "the times and manner of holding the elections for Senators," apply why they should have the power of determining the time of chusing Electors. The fifth is an additional check upon the President.

Sect. 2. The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States: he may require the opinion, in writing, of the principal officer in each of the Executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

The powers vested in the President by this and the subsequent clause, belong, from the nature of them, to the Executive branch of government; and could be placed in no other hands with propriety.

So long as laws can not provide for every case that may happen: So long as punishments shall continue disproportionate to crimes, the power of pardoning should some where exist. With whom could this power, so precious to humanity, be better entrusted, than with the President? An officer who, from his age and experience, will seldom be misled in the exercise of it; and who less liable to the influence of prejudice and passion than a popular assembly, will most probably be guided by discretion in the use of it.

Why Governor Randolph should wish to take from him this power, at least in cases of treason; and why he should have made a distinction between the power of pardoning before, and after

conviction; I am at a loss to conceive; and shall therefore attempt no further answer to an objection which appears to me, unsupported by reason.^{(b) 3}

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. 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 departments.

The Constitution has here lessened the authority of the President, by making the assent of two-thirds of the Senate necessary in the important cases of making treaties, in appointing Ambassadors, the Judges of the Supreme Court, and the great officers of State.

Writers upon government have established it as a maxim, that the Executive and Legislative authority should be kept separate. But the position should be taken with considerable latitude. The Executive authority here given to a branch of the Legislature, is no novelty, in free governments. In England, the Executive, or Cabinet Council, is taken indifferently from either House of Parliament. In the States of New York and Jersey, the Senate not only act as an Executive Council, but also form a part of the Court of Appeals.^{(c) 4}

The following reasons suggest themselves in support of the propriety of vesting the President and Senate with the power of making treaties.

The President is the Representative of the Union: The Senate the Representatives of the respective States. The objects of treaties must always be either of great national import, or such as concern the States in their individual capacities; but never can concern the individual members of the State. Secrecy and dispatch are necessary in making them: For without secrecy and dispatch, they are seldom made to purpose. Hence arises the impropriety of consulting either the Representatives of the people, or the different States. If the former were consulted, the interests of the small States might be sacrificed; if the latter, almost insurmountable obstacles would be thrown in the way of every negotiation.

In the Dutch Republic the States-General are obliged to consult their constituents, upon this, as upon every important occasion, however urgent may be the necessity. This vice in their Federal Constitution has more than once brought them to the brink of ruin.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

This inoffensive clause is made a ground of objection by Governor Randolph! I wish he had informed us wherefore.

Sect. 3. *He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient: He may on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: He shall receive Ambassadors and other public Ministers: He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.*

The powers given by this section are such as in all governments, have always been, and must necessarily be, vested in the first magistrate.

Sect. 4. *The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.*

The persons subject to impeachment, are the President, Vice-President, and all civil officers of the United States, and no others. . . .

(a) The present King of Poland was Stanislaus Leginski, Count Powniotowsky.

(h) *See Governor Randolph's letter. He has enforced none of his objections with reasons.*

(c) *It is to be observed, that this is the only instance where the Senate have the shadow of Executive power.*

1. In 1764 Stanislaus Poniatowski was elected King of Poland through the influence of Catherine the Great, Empress of Russia.

2. Both George Mason and Richard Henry Lee had raised this objection.

3. In his 10 October letter to the Speaker of the House of Delegates, Randolph recommended that the President be divested of his "power of pardoning for treason, at least before conviction."

4. In New Jersey, the Legislative Council or upper house and the governor were "the Court of Appeals, in the last resort." In New York, the senators, the chancellor, and the judges of the Supreme Court constituted a court for the correction of errors and the trial of impeachments.

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. IX: Virginia [2] (Madison, Wis.: Wisconsin Historical Society Press, 1990), 678–83, 697.