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An Old Whig III

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(excerpt)

“Great men are not always wise,” they have their seasons of inattention, and their moments of frailty and error, in which it is too evident, they are not wholly exempted from the infirmity of human nature. We ought not therefore implicitly to approve and admire, without examination, every act that proceeds even from the best and wisest of mankind. The proposed new plan of federal government, is undoubtedly the work of some of the ablest and best men in this country; but yet we are not, for that reason only, to believe that it is free from imperfection. The convention themselves inform us that the constitution which they offer to us, is the effect of mutual accommodations and concessions, in which mode it is certain that the best and wisest propositions are not always those which are adopted. Indeed it appears to me that, after all the time which has been spent in this business, the convention at the close of their session have been glad to lay hold of any system in which a majority could possibly concur, so as not to separate without doing any thing; and that the model of government now before us, is at least the work of haste and inattention. To be convinced of this, let us turn again to the sixth article, which I have referred to in the close of my last letter. By this article, not only the “proposed constitution and laws of the United States, which shall be made in pursuance thereof;” but also “*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 constitutions or laws of any state to the contrary notwithstanding.”—The power of making treaties is vested in the president, with the concurrence of two thirds of the senators present; so that the president and two thirds of the senate have power to make laws in the form of treaties, independent of the legislature itself. If Great Britain, for instance, were willing to enter into a treaty with us, upon terms which would be inconsistent with the liberties of the people and destructive of the very being of a Republic, the consent of our president for the time being, and of two thirds of the senators present, even though the senators present should be but a very small part of the senate, will give such a treaty the validity of a law. What power will there be anywhere to prevent this?—None.—Where all power legislative and executive is vested in one man or one body of men, treaties are made by the same authority which makes the laws; but where the legislature is extinct [*sic*] from the executive, the approbation of the legislature ought to be had, before a treaty should have the force of a law; and even in England the parliament is constantly applied to for their sanction to every treaty which tends to introduce an innovation or the slightest alteration in the

laws in being, the law there is not altered by the treaty itself; but by an act of parliament which confirms the treaty, and alters the law so as to accommodate it to the treaty. The King in council has no such power. The only answer which can be made to this objection, which is so obvious, to the power given by the proposed constitution to the executive of making treaties, which shall be the “supreme law of the land,” is, that it is not to be supposed they will abuse such power. — But yet we find that men in all ages have abused power, and that it has been the study of patriots and virtuous legislators at all times to restrain power, so as to prevent the abuse of it. — What then ought to be done, it may be asked. — Are treaties to be sent to all the different state legislatures for their approbation? By no means. But no treaty ought to be suffered to alter the law of the land, without the consent of the continental legislatures; the powers of the continental legislatures ought to be exactly defined; and there ought to be a bill of rights firmly established, which neither treaties nor acts of the legislature can alter. . . .

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