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

... The inequality of the representation of the Senate, has been made a great ground of objection.

We should never forget that this is a government proposed for thirteen independent States, unequal in population, and extent of territory, and differing in a variety of other circumstances. It will not be denied that the small, have an equal right to preserve their independence with the large States; and this was their only means of preserving it. The justice of this is acknowledged by most of the objectors and amenders of the plan.

We should here also recollect, that under the Confederation which at present exists, the small States have a vote in all respects equal to the large, even to Virginia; and it certainly was a great point gained by the large, to get their consequence increased in the House of Representatives in proportion to their numbers. In the United Provinces each of the seven States has but one vote in their Congress, and in that Confederation the disproportion between the States is much greater, than in ours; for the Province of Holland pays rather more than one half of the whole federal quota. Yet so great are the evils which would arise from a disunion, that this wealthy Province readily submits to so unequal a representation.

*Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one third may be chosen every second year: And if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.*

*No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.*

Notwithstanding the Senators are to be chosen by the Legislatures of the respective States, who surely are competent judges of those who are most capable of filling this important office: Notwithstanding one third of them are re-chosen every two years: Yet the enemies to the Constitution affect to call this an aristocratic body: And endeavour to excite visionary fears in the minds of men, that they will form a distinct order in the State, and become formidable to the liberty of America. I am not gifted with the spirit of prophecy, and therefore cannot say what will happen; but this I will boldly assert, that if power cannot be trusted in the hands of men so

appointed, it can be trusted no where. The different States will be well acquainted with the characters of those whom they elect to the Senate; their time of duration when elected is too short to enable them to form dangerous intrigues, or bring about important revolutions. It is a well established principle in rhetorick, that it is not fair to argue against a thing, from the abuse of it. Would you say there should be no Physicians because there are unskilful administers of medicine: No Lawyers because some are dishonest: No Courts because Judges are sometimes ignorant; nor government because power may be abused? In short, it is impossible to guard entirely against the abuse of power. Annual elections will not do it. The Delegates of Virginia are annually elected, yet it is a fact, that there has not been an Assembly since the government was framed, wherein the Bill of Rights and the Constitution have not been infringed. The instances have been of no great importance and therefore notwithstanding the danger of the principle, they have been overlooked.

*The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.*

*The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.*

The Vice-President has been introduced from the State Government of New York. This useful, though surely inoffensive officer, has been made by some objectors the bugbear of the Constitution. It is a strong proof of want of argument in the enemies to it, when they hold up this officer as dangerous. He is elected by the same persons as the President, and in the same manner. He presides in the Senate, but has no vote except when they are divided. This is the only power incident to his office whilst he continues Vice-President; and he is obviously introduced into the government to prevent the ill-consequences which might otherwise happen from the death or removal of the President. This is the purpose for which a similar officer has been introduced into the Constitution of New-York.

*The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.*

*Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.*

I conceive that the Senators are not impeachable, and therefore Governor Randolph's objection falls to the ground.<sup>1</sup> I am surprized that a man of that gentleman's abilities should have fallen into this mistake. The Senators having a power over their own members, have the right of expulsion. Why then should they be impeachable? For upon impeachments, the punishment is only removal from, and incapacity to hold offices. Expulsion amounts to the same thing. Besides, the Senators are elected by the people, though mediately, as well as the House of Representatives, and therefore have not the same degree of responsibility annexed to their characters, as the officers of government; and for this obvious reason,—the former are appointed by the people themselves to stand in their places, and they are the best judges of those who are most fit to serve them; but the latter are appointed by the servants of the people. It is a generally received maxim among

writers on government, that the Judiciary and Legislative departments should be kept distinct. The position is true to a certain extent; but this like most other general rules, is liable to exceptions. In the English government, which is certainly the freest in Europe, the House of Lords not only try impeachments, but is the highest civil court in the kingdom. In that Constitution the House of Commons are the impeachers, the House of Lords the triers: But no members either of the House of Commons or House of Lords, was ever impeached as such: But whenever members of either House have been impeached, it was as great officers of State. Under the federal government this is impossible, because the members of neither House can hold any office of State.

If this reasoning be not conclusive, the fourth section of the second article puts it out of doubt, viz. “The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment, &c.” The Senators are representatives of the people; and by no construction can be considered as civil officers of the State. If this be the case, in whose hands can this power be lodged with greater propriety, or with greater safety, than in those of the Senate? Or how can a better court be appointed? To impeach either the members of Senate or House of Representatives, would be to impeach the representatives of the people, that is the people themselves, which is an absurdity. . . .

1. In his 10 October letter to the Speaker of the House of Delegates, Randolph called for “a tribunal instead of the Senate for the impeachment of Senators.”

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), 663–66.