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Marcus III

Norfolk and Portsmouth Journal, 5 March 1788 (excerpt)

Answers to Mr. Mason's Objections to the New Constitution, Recommended by the late Convention at Philadelphia.

VIIth. Objection.

“By declaring all treaties supreme laws of the land, the Executive and the Senate have in many cases an exclusive power of legislation, which might have been avoided by proper distinctions with respect to treaties, and requiring the assent of the House of Representatives, where it could be done with safety.”

Answer.

Did not Congress very lately unanimously resolve in adopting the very sensible letter of Mr. Jay, that a treaty when once made pursuant to the sovereign authority, *ex vi termini* became immediately the law of the land? It seems to result unavoidably from the nature of the thing, that when the constitutional right to make treaties is exercised, the treaty so made should be binding upon those who delegated authority for that purpose. If it was not, what foreign power would trust us? And if this right was restricted by any such fine checks as Mr. Mason has in his imagination, but has not thought proper to disclose, a critical occasion might arise, when for want of a little rational confidence in our own government, we might be obliged to submit to a master in an enemy. Mr. Mason wishes the House of Representatives to have some share in this business; but he is immediately sensible of the impropriety of it, and adds, “Where it could be done with safety.” And how is it to be known whether it can be done with safety or not, but during the pendency of a negotiation? Must not the President and Senate judge, whether it can be done with safety or not? If they are of opinion it is unsafe, and the House of Representatives of course not consulted, what becomes of this boasted check, since if it amounts to no more than that the President and Senate may consult the House of Representatives if they please, they may do this as well without such a provision as with it? Nothing would be more easy than to assign plausible reasons after the negotiation was over, to shew that a communication was unsafe, and therefore surely a precaution that could be so easily eluded, if it was not impolitic to the greatest degree, must be thought trifling indeed. It is also to be observed, that this authority so obnoxious in the new Constitution (which is unfortunate in having little power to please some persons, either as containing new things or old) is vested indefinitely and without restriction in our present Congress,¹ who are a body constituted in the same manner as the Senate is to be; but there is this material difference in the two cases, that we shall have an additional check under the new system of a President of high personal character, chosen by the immediate body of the people.

1. Article IX of the Articles of Confederation gave Congress “the sole and exclusive right and power of . . . entering into treaties and alliances, provided that no treaty” restrain the states from imposing the same imposts and duties on foreigners as their own people were charged or prohibiting the importation or exportation of any commodity.

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