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Federal Farmer: *An Additional Number of Letters to the Republican*, New York, 2 May 1788 (excerpt)

LETTER XI.

JANUARY 10, 1788.

... By the art. 2. sect. 2. treaties must be made with the advice and consent of the senate, and two-thirds of those present must concur: also, with consent of the senate, almost all federal officers, civil and military, must be appointed. As to treaties I have my doubts; but as to the appointments of officers, I think we may clearly shew the senate to be a very improper body indeed to have any thing to do with them. I am not perfectly satisfied, that the senate, a branch of the legislature, and court for trying impeachments, ought to have a controuling power in making all treaties; yet, I confess, I do not discern how a restraint upon the president in this important business, can be better or more safely lodged: a power to make and conclude all treaties is too important to be vested in him alone, or in him and an executive council, only sufficiently numerous for other purpose[s], and the house of representatives is too numerous to be concerned in treaties of peace and of alliance. This power is now lodged in congress, to be exercised by the consent of nine states. The federal senate, like the delegations in the present congress, will represent the states, and the consent of two-thirds of that senate will bear some similitude to the consent of nine states. It is probable the United States will not make more than one treaty, on an average, in two or three years, and this power may always be exercised with great deliberation: perhaps the senate is sufficiently numerous to be trusted with this power, sufficiently small to proceed with secrecy, and sufficiently permanent to exercise this power with proper consistency and due deliberation. To lodge this power in a less respectable and less numerous body might not be safe; we must place great confidence in the hands that hold it, and we deceive ourselves if we give it under an idea, that we can impeach, to any valuable purpose, the man or men who may abuse it.

On a fair construction of the constitution, I think the legislature has a proper controul over the president and senate in settling commercial treaties. By art. 1. sect. 2. the legislature will have power to regulate commerce with foreign nations, &c. By art. 2. sect. 2. the president, with the advice and consent of two-thirds of the senate, may make treaties. These clauses must be considered together, and we ought never to make one part of the same instrument contradict another, if it can be avoided by any reasonable construction. By the first recited clause, the legislature has the power, that is, as I understand it, the sole power to regulate commerce with foreign nations, or to make all the rules and regulations respecting trade and commerce between our citizens and foreigners: by the second recited clause, the president and senate have power

generally to make treaties.—There are several kinds of treaties—as treaties of commerce, of peace, of alliance, &c. I think the words to “make treaties,” may be consistently construed, and yet so as it shall be left to the legislature to confirm commercial treaties; they are in their nature and operation very distinct from treaties of peace and of alliance; the latter generally require secrecy, it is but very seldom they interfere with the laws and internal police of the country; to make them is properly the exercise of executive powers, and the constitution authorises the president and senate to make treaties, and gives the legislature no power, directly or indirectly, respecting these treaties of peace and alliance. As to treaties of commerce, they do not generally require secrecy, they almost always involve in them legislative powers, interfere with the laws and internal police of the country, and operate immediately on persons and property, especially in the commercial towns: (they have in Great-Britain usually been confirmed by parliament;) they consist of rules and regulations respecting commerce; and to regulate commerce, or to make regulations respecting commerce, the federal legislature, by the constitution, has the power. I do not see that any commercial regulations can be made in treaties, that will not infringe upon this power in the legislature; therefore, I infer, that the true construction is, that the president and senate shall make treaties; but all commercial treaties shall be subject to be confirmed by the legislature. This construction will render the clauses consistent, and make the powers of the president and senate, respecting treaties, much less exceptionable.

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