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Foreign Spectator XIV Philadelphia *Federal Gazette*, 9 December 1788

REMARKS on the Amendments to the Federal Constitution, proposed by the Conventions of Massachusetts, New-Hampshire, New-York, Virginia, South and North-Carolina, with the minorities of Pennsylvania and Maryland, by a FOREIGN SPECTATOR.

NUMBER XIV.

We proceed to view the amendments that respect the executive powers of the federal government. The minority of Maryland request, *that the president shall not command the army in person, without the consent of Congress—5th am.* The convention of New-York lays the same condition on him, *or the person exercising his powers for the time being—22d am.* It also proposes, *that the executive shall not grant pardons for treason, unless with the consent of Congress; but may, at his discretion, grant reprieves to persons convicted of treason, until their cases can be laid before the Congress—21st am.* Before a particular discussion of these amendments, which are meant to guard against dangerous misconduct of the executive, let us examine what degree of probability this supposition may have. The constitution has provided a truly excellent mode of electing this first officer of the United States. He is chosen by the whole people, through the refined medium of electors, on whom the people devolve this confidential trust. A number of electors, equal to the collective body of Congress, many of whom have no doubt equal abilities with the senators and representatives, must be competent judges of the talents and virtues requisite for this august office, and, either by personal acquaintance or authentic information, have an extensive knowledge of the most distinguished citizens of the union; consequently a sufficient choice of candidates. To prevent any influence of personal interest, party, or local prejudices, *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. No senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.* A majority of the whole number of electors is required. *If there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person has a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representatives from each state having one vote—* 1st sect. 2d art. The transient existence and distant situation of the electors, is a very great security from corruption; the most artful and powerful candidate has not time for operations of intrigue on a great number of men, dispersed over thirteen states, of different characters and situations

in life, many of whom must be strangers to him; nor can the electors themselves enter into any combinations inconsistent with their duty. If the votes are divided, the house of representatives, which by its constitution is the immediate offspring of the people, decides in a mode which prevents all undue influence of the greater states.

By these proceedings, there is a moral certainty that the first magistrate of the union will always be one of the most illustrious citizens, whose wisdom, integrity, and honour are universally respected. If, after all, it should happen, by that imbecility incident to human affairs, that Congress entertain an unfavourable opinion of his heart or understanding, it is very uncertain how far their judgment is to be esteemed in this case, when opposed to the sentiments of that respectable body of electors, who, like themselves, were delegated by the people. As it is scarce possible that this voice of Congress is unanimous, the minority must be added in the opposite scale, which may then greatly preponderate in the estimation of impartial spectators, and suggest a belief that only a party in Congress disapproved of the president.

As to military talents, they are very valuable in the first confidential office of the union, and judicious electors will no doubt pay a due regard to them without lessening their estimation of the civil acquirements. Happily, a long and profound peace may deny the opportunity of military exploits; but a just and extensive theory of war, is a principal branch of that political science which should be the favourite study of every person who aspires to the highest offices of government. This theory, improved by all the practice, which, in time of peace is attainable, will qualify a president of Congress for the command of the army and militia in time of danger. But if, with other estimable qualities, he is not a general, it is to be hoped that vanity would not make him hazard his own reputation, and the welfare of his country; at least, he will not without a sense of personal courage, take upon him a dangerous office.

Supposing an occasional necessity for the interference of Congress, it would very little mend the evil, because the president will still by his official authority direct the operation of war; he can not only check and thwart the actions of the federal general, but also, by positive orders, force him into very bad measures.

The principal benefit intended by this prohibition is, perhaps, to prevent a traitorous president from turning the military force against his country. Such a desperate act of treason supposes him to be the head of a powerful faction, and to have many friends in both houses of Congress. It is then very probable that he may gain a majority in the senate to concur with him in the appointment of a general fit for his purpose; and he may by such a tool effect more mischief than he could in person: because between two traitors the guilt is not easily fixed. Many preparatory steps may be taken towards an effectual rebellion, which yet afford not a full proof of treason. At all events the president may wait till his associate has tried a capital stroke, and, if it miscarries, send him off to a foreign country.

The second amendment of the New-York convention, by which the executive shall not grant pardons for treason without the consent of Congress, is a necessary appendage to the one we have now considered; and the omission of it by the minority of Maryland is an inconsistency. Except the correspondence of individuals with a foreign enemy in time of war, treason against the United States will be carried on by leaders of a strong party, and therefore in various degrees involve a considerable number of persons. Such epidemic madness will probably, in part, affect the representatives of the people, and consequently disqualify them for impartial judgment. The

sympathy of those who favour the condemned, with the good-natured weakness of others, may procure impunity, where the terror of example is necessary.

Again, when the victorious party, inflamed by a severe contest, has got full possession of legislative powers, they may stain the annals of the empire with acts of barbarity, which their children cannot blot out with tears of shame and sorrow. I appeal to every man of information, if this reasoning is not founded on the history of all republics. The president of the union may from the mode of his election and the dignity of his office, be supposed, if not entirely sound, at least far less tainted by the fever of such dreadful times. The solicitations of the condemned and their friends, the consciousness that the lives of fellow-creatures, and all the future happiness of their families depend on him, the reflection that a whole nation, nay, a great part of the world, critically observe his conduct: all this must awaken every feeling of humanity, and the most scrupulous caution; whereas a band of judges often exercise cruelty, because they divide the guilt among them, or lay the blame on some principal agents. It is moreover, a weighty consideration, that the appointment of the president, being for four years, may probably be previous to the commencement of a rebellion; but a house of representatives may be formed in the height of it, or what is worse, at the conclusion. Such a number of men, under the impulse of revenge, mingling, after two years, with the general mass, are eligible judges on the lives and fortunes of their fellow-citizens.

Another great argument for granting this power to the chief magistrate is, that in times of civil tumults, a well-timed offer of pardon to the insurgents, may restore the tranquility of the commonwealth. If the convening of the legislature is necessary for this measure, the opportunity may be irreparably lost; every person knows the amazing effect of transient symptoms in such political convulsions.

We may then conclude, that although it is possible that the first confidential officer of the confederacy may prove a traitor, yet those events are far more probable, in which his power of granting pardon for treason will be useful to the republic.

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. XXXIX: Bill of Rights [3] (Madison, Wis.: Wisconsin Historical Society Press, 2023), 402–5.