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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.

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The minority of Pennsylvania project, by the 12th am. *that a constitutional council be appointed to advise and assist the president, who shall be responsible for the advice they give.* This alteration they deem necessary, *to the end that the legislative, executive, and judiciary powers, may be kept separate;* and think it advantageous, *as thereby the senators would be relieved from almost constant attendance.* The minority of Maryland, in the 11th am. has the short expression, *that there be a responsible council to the president.* Such a material subject required a more clear and ample explanation. The sense of both must, however, be to invest the president alone with all the powers, which the constitution gives to him and the senate jointly, under the simple restriction of hearing the advice of the constitutional council.

It would avail very little to make the council responsible, when the president may reject their advice at pleasure. At the same time his responsibility would be considerably diminished, when divided between him and them; their unanimity or disagreement affording him an equal excuse for bad measures. The example of the British constitution is not at all applicable here. In a monarchy, the maxim, "that the king can do no wrong," must, for the sake of public peace, be admitted even in cases really criminal. To restrain an executive so formidable, his necessary instruments must, so far as possible, be disabled for doing mischief, by the dread of an awful account; the privy council is therefore a substitute for the responsibility of the first magistrate. But in a republic, no such distinction is necessary; and accordingly the president himself is, by the 4th sect. 4th art. liable to *impeachment*, and, even after conviction and removal from office, *to indictment, trial, judgment and punishment, according to law*, by the last par. 3d sect. 1st art.

If this argument against a constitutional council has due weight, a consideration of œconomy can do little in its favour. But this itself is on the other side, because all the expence saved by lessening the business of the senate, would be greatly exceeded by the salaries of a dozen counsellors, who must constantly reside at the seat of government, and be supported according to their official dignity.

It certainly is not reasonable to give the president, exclusively, the great powers of making treaties, and appointment to all the important offices under the United States. Such monarchial

greatness is too much for any citizen of a republic, who can never personally be so deeply interested in the honor and prosperity of the empire, as an hereditary king; who may be influenced not only by favourites, but numerous friends and relations; who may himself want patrons when he returns to a private station; who may also be liable to the pernicious bias of party. The exercise of those powers partake more of the legislative than executive department, and requires not that degree of secrecy, decision and dispatch, which makes the military command so indivisible. This part of the government must then be vested in a body, of which the president is the head. The mode of his election, and the magnitude of his other constitutional prerogatives, fully justify this confidence, which will unite activity and great responsibility with deliberate wisdom, in this important department. The only question is, whether the federal senate may not form the body.

It is indeed an excellent principle, to keep the legislative, executive, and judicial powers of government, separate from and independent of each other; but it should be applied with this judicious sentiment in the constitution of New-Hampshire,^(a) “so far as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity.” The above minorities do not criticize the negative power of legislation conferred on the executive, which may counteract any majority less than two thirds of both houses. With all their amendments of the judicial powers, they still acquiesce in the right of Congress to establish federal courts, and in the appointment of the judges by the executive. The democratic constitution of Pennsylvania yet found it necessary to appoint the judges by the president and council; and in Maryland, even justices of the peace are commissioned by the governor and council. In Pennsylvania all impeachments brought by the assembly against any officer of the state, whether judicial or executive, are also heard and determined by the president and council.

The legislative authority of the senate could only indirectly and feebly assist them in the abuse of this portion of executive power, and not at all without corrupting the house of representatives: but their judicial right of trying impeachments creates an apprehension of partiality to members of their own body, or the officers of their appointment. Jealousy between colleagues is perhaps more common than indulgence. The mere appointment to an office cannot produce an attachment that will connive at capital faults; it must rather, with a sense of responsibility and public blame, provoke a resentment: on this principle is founded the general practice in the present state-governments, and other nations, to render the continuance in many offices dependent on the pleasure of those who bestow them.

In the great diversity of connexions, it is not probable that many persons could have a majority of zealous friends in the senate, and less probable that any would find them willing to hazard their own reputation in defence of his crimes, when he stands accused by the national representatives. It is also evident that in general the officers jointly appointed by the president and senate must rather be his choice than theirs, because they can only reject his nomination; and in many cases by repeated dissent only procure a less disagreeable person.

A corrupt junto in the senate will indeed commit great mischief: if it forms a majority, it may often force the president into less eligible appointments: if it only exceeds one-third at a critical time, it can prevent the formation of a beneficial treaty. The same number can also defeat an impeachment, and consequently in case of extremity protect each other. The worst effect, how-

ever, of any corruption in the senate are of a negative kind, and small in comparison to the evils of a collusion between them and the president. With a majority, he could place worthless men in the first offices of the union; and with two-thirds he may conclude a shameful and pernicious treaty. The depravity of human nature justifies indeed any supposition, and no practicable tie should be neglected; yet, as the senators will be chosen by great bodies of what should be the best and wisest men in the respective states, and as every means is taken to elect the president from the circle of the most illustrious citizens, I must confess that a nefarious corruption in the head would be a lamentable sym[p]tom of disease in the whole body, and that any other tribunal which may be devised for judging them, could merit no confidence. We shall, however, consider the amendments proposed for this purpose.

(a) *Constitution of New-Hampshire, 1st part, 37th par.*

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