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Foreign Spectator XVI Philadelphia *Federal Gazette*, 16 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 XVI.

The conventions of Virginia and North-Carolina, by the 19th and 20th ams. respectively, demand, *that some tribunal other than the senate, be provided for trying impeachments of senators.* The convention of New-York proposes, that all impeachments whatever may be tried by a temporary court, of which the senate shall be a part, in the following manner: *That the court for the trial of impeachments shall consist of the senate, the judges of the supreme court of the United States, and the first or senior judge, for the time being, of the highest court of general and ordinary common law jurisdiction in each state; that the Congress shall, by standing laws, designate the courts in the respective states, answering this description, and in the states having no courts exactly answering this description, shall designate some other court; preferring such, if any there be, whose judge or judges may hold their places during good behaviour: provided that no more than one judge other than judges of the supreme court of the United States, shall come from one state. That the Congress be authorised to pass laws for compensating the said judges for such services, and for compelling their attendance; and that a majority at least of the said judges shall be requisite to constitute the said court. That no person impeached, shall sit as a member thereof: that each member shall, previous to the entering upon any trial, take an oath or affirmation, honestly and impartially to hear and determine the cause; and that a majority of the members present shall be necessary to a conviction,* 25th am.

We have just seen that the most dangerous parts of mal-administration, are those which require a collusion between the president and a majority of the senate: let us then candidly examine what security against this may be expected from the suggested provision. The members of this constitution will be 26 senators, 13 judges from the respective states, and those of the supreme federal court, which I shall suppose 7; in all 46. From this number must be deducted the majority of impeached senators, at least 14; and no doubt, on the smallest computation, 4 of the other members, by reason of vacancies, sickness, or other impediments; which makes the remainder 28. A majority of this viz. 15, is necessary for conviction; consequently if 13 can be gained by the president and his colleagues, those high criminals will come off with impunity. I leave it to the reflection of every thinking man, whether any 13 persons in the most respectable

stations can be depended on, when 15, the most confidential persons in the United States, have basely betrayed their trust! Possibly the senators may have brothers or near relations among the federal judges, and those sent from the different states. They and the president will certainly spare no means of corruption to save themselves from infamy, confiscation and other penalties; and by distributing only a part of the nefarious emoluments of their offices, they may still retain some wages of iniquity, and a half tarnished reputation.

This reasoning applies, with still greater force, to the case when a pernicious treaty is the object of impeachment. By corrupting only twelve members of the court, the president, with his eighteen fellow-traitors, will then be acquitted; and they will have more ample means of corruption, by that foreign gold which is the price of their guilt. It is also less probable that the virtue of these twelve judges will be invincible, when nineteen of those who were deemed the best men in the country, have acted so basely.

It is then, at best, very doubtful, if the remedy proposed by this amendment, or any other of the kind, would have the desired effect. If any particular court, for the trial of impeachments, must be erected, the senate ought not to make a part of it. It would also be necessary to exclude the judges of the supreme court, as they must again sit in judgment on the same offenders, if, after the impeachment, they should be indicted to take their trial in the course of criminal law. This court ought, also, to be equally numerous with the one proposed, in order to compensate, if possible, by numbers, the lamentable scarcity of public virtue, too visible from the depravity of so many high offenders. The trouble and expence of collecting such a number of persons, from the distant parts of the continent, will be so great, that the more common impeachment of an officer, or a senator, would not be an adequate object; yet it will not be easy to determine the cases in which the senate may be empowered to try an impeachment, and in which it should be reserved for such a court. Probably, however, such an extraordinary expedient may seem only proper when the president and a majority of the senate are impeached; and the importance of the matter demands the discussion of such a plan.

As, on the one hand, we suppose the executive department capable of very criminal conduct, so we must, on the other, admit the possibility of guilt in the house of representatives. Forty persons, or less, may combine in a false, or, at least, highly aggravated accusation against the president and fourteen senators. The weight of a superior number is here balanced by the greatness of confidence reposed in these men by those who chose them.

Party is the species of corruption most likely to happen in this, as all other free states; and this may infect the house of representatives not less than the senate; indeed, probably with more feverish symptoms, from their immediate and frequent delegation by the people. When a nation is unhappily divided by two parties, they generally prevail by turns, and persecute each other. The minority may, by a sudden change of the public mind, or by extraordinary exertions, carry an election, and form a majority in the house of representatives; and animated by the true spirit of party, immediately bring an impeachment against the president and the senate. This they may do merely to turn them out, in order to get their friends into these consequential departments, and all the appointments thereon depending. It is even well if nothing worse happens, as frequently the most faithful discharge of their trust may be construed into treason and atrocious crimes, because in opposition to a favourite system. Can we reasonably expect that any court,

though previously constituted in the best manner, would be free from prejudices, or firm enough against popular clamours!

In the present mode, the executive is protected from this fury of party; for though the one-third of new senators that come in with the new house of representatives, and even some of those that remain, may be violent partisans, yet they cannot easily make up two-thirds of the whole, as a majority of the senate has by the supposition sided with the president. At the same time, the president is not safe from condign punishments, except he has indeed a very strong party in the senate; because, by the rotation, that happens every second year, he may exchange some of his best friends for severe judges. If the chief-justice, who presides on the impeachment of the president, will do his duty, he can expose his guilt to public view in a manner that will nearly answer the purpose, although a proper judgment cannot be obtained for the want of integrity in two-thirds of the members.

Every honest man will heartily wish for all practicable checks on the abuse of power; but there is a limit, beyond which they cannot be strained. A majority of a legislature may pass very unjust and pernicious laws; yet the only remedy is to repeal them by a new representation. What constitutional courts can be formed for judging and punishing a depraved legislative body? Such proceedings would subvert all regular government, and introduce the dominion of anarchy. What cruel tender-laws have been enacted by our state governments; yet we have not seen any impeachments brought against them. It is only in extreme cases that the people can punish such abuse of their trust, by erecting temporary and very extraordinary courts for the purpose—a remedy worse than the evil.

An atrocious collusion, between the president and senate, may be impeached, by the house of representatives, before the next senate, when all the old members shall be changed; but even this would require a nice attention to public justice on one side, and personal rights on the other; because a fearful suspence is itself a severe punishment.

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), 426–29.