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(Oliver Ellsworth) Attacks Elbridge Gerry

A Landholder V

Connecticut Courant, 3 December 1788 (excerpt)

... We are further told “that the judicial department, or those courts of law to be instituted by Congress, will be oppressive.”

We allow it to be possible, but from whence arises the probability of this event? State judges may be corrupt, and juries may be prejudiced and ignorant, but these instances are not common; and why shall we suppose they will be more frequent under a national appointment and influence, when the eyes of a whole empire are watching for their detection?

Their courts are not to intermeddle with your internal policy and will have cognizance only of those subjects which are placed under the control of a national legislature. It is as necessary there should be courts of law and executive officers, to carry into effect the laws of the nation, as that there be courts and officers to execute the laws made by your state assemblies. There are many reasons why their decisions ought not to be left to courts instituted by particular states.

A perfect uniformity must be observed thro the whole Union, or jealousy and unrighteousness will take place; and for a uniformity, one judiciary must pervade the whole. The inhabitants of one state will not have confidence in judges appointed by the legislature of another state, in which they have no voice. Judges who owe their appointment and support to one state will be unduly influenced and not reverence the laws of the Union. It will at any time be in the power of the smallest state, by interdicting their own judiciary, to defeat the measures, defraud the revenue, and annul the most sacred laws of the whole empire. A legislative power without a judicial and executive under their own control is in the nature of things a nullity. Congress under the old Confederation had power to ordain and resolve, but having no judicial or executive of their own, their most solemn resolves were totally disregarded. The little State of Rhode Island was purposely left by Heaven to its present madness for a general conviction in the other states that such a system as is now proposed is our only preservation from ruin. What respect can anyone think would be paid to national laws, by judicial and executive officers who are amenable only to the present Assembly of Rhode Island? The rebellion of Shays and the present measures of Rhode Island ought to convince us that a national legislature, judiciary, and executive must be united or the whole is but a name; and that we must have these or soon be hewers of wood and drawers of water for all other people.

In all these matters and powers given to Congress, their ordinances must be the supreme law of the land or they are nothing. They must have authority to enact any laws for executing their own powers, or those powers will be evaded by the artful and unjust, and the dishonest trader will defraud the public of its revenue.

As we have every reason to think this system was honestly planned, we ought to hope it may be honestly and justly executed. I am sensible that speculation is always liable to error. If there be any capital defects in this Constitution, it is most probable that experience alone will discover them. Provision is made for an alteration if on trial it be found necessary.

When your children see the candor and greatness of mind with which you lay the foundation, they will be inspired with equity to furnish and adorn the superstructure.

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