

Aristides: Remarks on the Proposed Plan, 31 January 1788

It is universally, by good writers, agreed, that where any one political body possesses *full* powers, legislative and executive, whether it be a single man, or a select few, or a numerous assembly, it matters not;—the government must, in a short time, become despotic. That in a free government, therefore, the legislative and executive ought to be ever distinct and separate, is a position in the Maryland declaration of rights. This hackneyed principle has been urged, with great confidence, against constituting the senate a council to the president. It has been urged too, even by the men who would have the whole powers of the federal government centered in a single assembly. I mean the men who insist that the convention ought to have done no more than advise in what manner the powers of the present congress should be increased. Let us understand the principle in its proper extent. It does not follow, that a body, whose assent is required in making laws, but who cannot, by themselves, do any legislative act, may not be a fit council to the supreme executive magistrate, deriving his authority, like them, from the people, in no manner dependent on them, or the immediate representatives of the people, for any private advantage, and possessed of no share in legislation, except that of offering his advice.

The objection to this part of the constitution, I confess, at first, appeared formidable. The reasons which I now conjecture to have influenced the convention, did not then occur. But I have long adhered to a maxim, which I warmly recommend to others—never to condemn, absolutely, even within myself, any one kind, until I can hit upon some other kind which I *conceive* better. As no human institution can possess absolute perfection, it is an easy matter to espy some fault or defect in almost every thing, which the wit of man can contrive, or, at least, to reason plausibly against it. But this faculty of finding faults is by no means sufficient to constitute the politician or statesman. I deliberated, what kind of council might be preferable, under all circumstances, to the senate. The plainest thing in nature! Exclaims he, who solves all difficulties at once. Why not appoint a body to act as council and nothing else?

One reason, and that not very unpopular, is the great additional expence. However, this reason I deem the lightest of all; and the general proposition involves a great variety of other considerations.

It is essential to a council, that the members be free, as possible, from all bias, or improper influence. This separate and distinct council must be elected by the people, or by special electors; by the legislature, or by one of its branches; or by some other department; or by the president.—

That the people should either make laws to bind themselves, or elect persons, without whose consent, no laws shall be made, is essential to their freedom. But universal experience forbids, that they should also immediately choose persons for the execution of the laws. Shall the legislature then, or the senate, or the house of representatives, have this appointment? A council thus chosen would be dependent on its electors; and it would be the same thing, in many respects, as if the legislature should execute its own laws. Can you believe, that a council,

chosen annually, or once in two or three years, would dare to pursue, in all cases, the dictates of its own judgment, contrary to the known will of those, who will soon have an opportunity of removing them? Would they not be emulous to please leading men; and would there not be opened, at every period of election, a fine field for intrigue and cabal? There would be one way only of rendering a council, thus chosen, independent of their electors; and that is, the choosing them for life, with salaries, not to be augmented or diminished.

Against choosing an executive for life the reasons are weighty indeed. Should they then hold their commissions during good behaviour, there must be some tribunal to determine on that good behaviour; and what body it can be, except the congress, would be difficult to decide. Besides good behaviour in a member of council is not determinable, like that of a judge, which has relation to the laws, and things universally known. In the office of the former, there is so much left to discretion, that I cannot perceive with what propriety he can hold it on the condition of good behaviour. There can be no sure criterion, and the decision must therefore unavoidably depend on the discretion, or mere opinion, of his judges, founded on no established principles whatever.—

A council, chosen by the president himself, would probably consist of creatures devoted to his will. I can discern no reason, wherefore any other officers of the government should make the appointment. There remains then only the people's choosing electors, and placing the council of the president on the same footing with himself. Here occurs the objection of expence; and here again would arise the controversy respecting equality of representation.—

The senate will, in all human likelihood, consist of the most important characters, men of enlightened minds, mature in judgment, independent in their circumstances, and not deriving their principal subsistence from their pay, as probably would the members of a board, distinct and separate from all other public employments.

I am not, therefore, barely reconciled to the article in question. It commands my warmest admiration, and entire applause.—

Is there any power improperly trusted to that select assembly, in which all the states have equal interest, and to which they will assuredly make a determined point of sending their best men? It is this equality, almost as much as any other circumstance, which recommends it as an executive council. The senate are to try impeachments. By their advice only, may the president make treaties, appoint ambassadors, ministers, consuls, judges of the supreme court, and officers, not otherwise provided for in the constitution. Let us reflect, whether these things could be better done, by any other body, and whether it be proper for any one man (suppose even the saviour of his country to be immortal) to have the appointment of all those important officers. It has always appeared to me, that neither one man, nor many men, should possess this transcendent authority, in a republic. A single man in high power, if he always mean right, can with difficulty discern the true characters of men. Continual efforts are made to impose on his judgment. But, indeed, a single man *generally* confers offices by favour. In a large assembly there is perhaps equal partiality; and elections are conducted by intrigue and cabal. A select

assembly is not so open to direct application; and although each may be supposed to entertain his partialities, he cannot recommend his favourites, without pointing out their essential qualifications, and becoming, in some measure, responsible for their conduct. It is here, that characters are most fairly investigated, and appointments most deliberately made. I appeal to universal experience, whether these remarks be not strictly founded on fact, and whether the most judicious appointments have not been made by small select assemblies. I confess, that the number of the senators for this purpose only is excessive. But I can confidently rely on the extraordinary selection to compensate for the excess.

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009. Original source: Commentaries on the Constitution, Volume XV: Commentaries on the Constitution, No. 3