

Federal Farmer: *An Additional Number of Letters to the Republican*, New York, 2 May 1788

For these, and other reasons, I conclude, the legislature is not a proper body for the appointment of officers in general. But having gone through with the different modes of appointment, I shall endeavour to shew what share in the distribution of the power of appointments the legislature must, from necessity, rather than from propriety, take. 2. Officers may be appointed by the president and senate—this mode, for general purposes, is clearly not defensible. All the reasoning touching the legislature will apply to the senate; the senate is a branch of the legislature, which ought to be kept pure and unbiassed; it has a part in trying officers for misconduct, and in creating offices, it is too numerous for a council of appointment, or to feel any degree of responsibility: if it has an advantage of the legislature, in being the least numerous, it has a disadvantage in being more unsafe: add to this, the senate is to have a share in the important branch of power respecting treaties. Further, this sexennial senate of 26 members, representing 13 sovereign states, will not, in practice, be found to be a body to advise, but to order and dictate in fact; and the president will be a mere *primus inter pares*. The consequence will be, that the senate, with these efficient means of influence, will not only dictate, probably, to the president, but manage the house, as the constitution now stands; and under appearances of a balanced system, in reality, govern alone. There may also, by this undue connection, be particular periods when a very popular president may have a very improper influence upon the senate and upon the legislature. A council of appointment must very probably sit all, or near all, the year—the senate will be too important and too expensive a body for this. By giving the senate, directly or indirectly, an undue influence over the representatives, and the improper means of fettering, embarrassing, or controuling the president or executive, we give the government, in the very out set, a fatal and pernicious tendency to that middle undesirable point—aristocracy. When we, as a circumstance not well to be avoided, admit the senate to a share of power in making treaties, and in managing foreign concerns, we certainly progress full far enough towards this most undesirable point in government. For with this power, also, I believe, we must join that of appointing ambassadors, other foreign ministers, and consuls, being powers necessarily connected.—In every point of view, in which I can contemplate this subject, it appears extremely clear to me, that the senate ought not generally to be a council of appointment. The legislature, after the people, is the great fountain of power, and ought to be kept as pure and uncorrupt as possible, from the hankerings, biasses, and contagion of offices—then the streams issuing from it, will be less tainted with those evils. It is not merely the number of impeachments, that are to be expected to make public officers honest and attentive in their business. A general opinion must pervade the community, that the house, the body to impeach them for misconduct, is disinterested, and ever watchful for the public good; and that the judges who shall try impeachments, will not feel a shadow of bias. Under such circumstances, men will not dare transgress, who, not deterred by such accusers and judges, would repeatedly misbehave. We have already suffered many and extensive

evils, owing to the defects of the confederation, in not providing against the misconduct of public officers. When we expect the law to be punctually executed, not one man in ten thousand will disobey it: it is the probable chance of escaping punishment that induces men to transgress. It is one important mean to make the government just and honest, rigidly and constantly to hold, before the eyes of those who execute it, punishment, and dismissal from office, for misconduct. These are principles no candid man, who has just ideas of the essential features of a free government, will controvert. They are, to be sure, at this period, called visionary, speculative and anti-governmental—but in the true stile of courtiers, selfish politicians, and flatterers of despotism—discerning republican men of both parties see their value. They are said to be of no value, by empty boasting advocates for the constitution, who, by their weakness and conduct, in fact, injure its cause much more than most of its opponents. From their high sounding promises, men are led to expect a defence of it, and to have their doubts removed. When a number of long pieces appear, they, instead of the defence, &c. they expected, see nothing but a parade of names—volumes written without ever coming to the point—cases quoted between which and ours there is not the least similitude—and partial extracts made from histories and governments, merely to serve a purpose. Some of them, like the true admirers of royal and senatorial robes, would fain prove, that nations who have thought like freemen and philosophers about government, and endeavoured to be free, have often been the most miserable: if a single riot, in the course of five hundred years happened in a free country, if a salary, or the interest of a public or private debt was not paid at the moment, they seem to lay more stress upon these trifles (for trifles they are in a free and happy country) than upon the oppressions of despotic government for ages together. (As to the lengthy writer in New-York you mention, I have attentively examined his pieces; he appears to be a candid good-hearted man, to have a good stile, and some plausible ideas; but when we carefully examine his pieces, to see where the strength of them lies; when the mind endeavours to fix on those material parts, which ought to be the essence of all voluminous productions, we do not find them: the writer appears constantly to move on a smooth surface, the part of his work, like the parts of a cob-house, are all equally strong and all equally weak, and all like those works of the boys, without an object; his pieces appear to have but little relation to the great question, whether the constitution is fitted to the condition and character of this people or not.) But to return—3. Officers may be appointed by the president and an executive council—when we have assigned to the legislature the appointment of a few important officers—to the president and senate the appointment of those concerned in managing foreign affairs—to the state governments the appointment of militia officers, and authorise the legislature, by legislative acts, to assign to the president alone, to the heads of the departments, and courts of law respectively, the appointment of many inferior officers; we shall then want to lodge some where a residuum of power, a power to appoint all other necessary officers, as established by law. The fittest receptacle for this residuary power is clearly, in my opinion, the first executive magistrate, advised and directed by an executive council of seven or nine members, periodically chosen from such proportional districts as the union may for the purpose be divided into. The people may give their votes for

twice the number of counsellors wanted, and the federal legislature take twice the number also from the highest candidates, and from among them chuse the seven or nine, or number wanted. Such a council may be rationally formed for the business of appointments; whereas the senate, created for other purposes, never can be—Such councils form a feature in some of the best executives in the union—they appear to be essential to every first magistrate, who may frequently want advice.

To authorise the president to appoint his own council would be unsafe: to give the sole appointment of it to the legislature, would confer an undue and unnecessary influence upon that branch. Such a council for a year would be less expensive than the senate for four months. The president may nominate, and the counsellors always be made responsible for their advice and opinions, by recording and signing whatever they advise to be done. They and the president, to many purposes, will properly form an independent executive branch; have an influence unmixed with the legislative, which the executive never can have while connected with a powerful branch of the legislature. And yet the influence arising from the power of appointments be less dangerous, because in less dangerous hands—hands properly adequate to possess it. Whereas the senate, from its character and situation will add a dangerous weight to the power itself, and be far less capable of responsibility, than the council proposed. There is another advantage; the residuum of power, as to appointments, which the president and council need possess, is less than that the president and senate must have. And as such a council would render the sessions of the senate unnecessary many months in the year, the expences of the government would not be increased, if they would not be lessened by the institution of such a council. I think I need not dwell upon this article, as the fitness of this mode of appointment will perhaps amply appear by the evident unfitness of the others.

4. Officers may be appointed by the president alone. It has been almost universally found, when a man has been authorized to exercise power alone, he has never done it alone; but, generally, aided his determinations by, and rested on the advice and opinions of others. And it often happens when advice is wanted, the worst men, the most interested creatures, the worst advice is at hand, obtrude themselves, and misdirect the mind of him who would be informed and advised. It is very seldom we see a single executive depend on accidental advice and assistance; but each single executive has, almost always, formed to itself a regular council, to be assembled and consulted on important occasions; this proves that a select council, of some kind, is, by experience, generally found necessary and useful. But in a free country, the exercise of any considerable branch of power ought to be under some checks and controuls. As to this point, I think the constitution stands well, the legislature may, when it shall deem it expedient, from time to time, authorise the president alone to appoint particular inferior officers, and when necessary to take back the power. His power, therefore, in this respect, may always be increased or decreased by the legislature, as experience, the best instructor, shall direct: always keeping him, by the constitution, within certain bounds.

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 XVII: Commentaries on the Constitution, No.

5