[1787 Oct. 7]

Objections to the Constitution of Government formed by the Convention &c.

(1787)

There is no Declaration of Rights; and the Laws of the general Government being paramount to the Laws & Constitutions of the several States, the Declarations of Rights in the separate States are no Security. Nor are the People secured even in the Enjoyment of the Benefits of the common-Law; which stands here upon no other Foundation than it's having been adopted by the respective Acts forming the Constitutions of the several States.

In the House of Representatives there is not the Substance, but the Shadow only of Representation; which can never produce proper Information in the Legislature, or inspire Confidence in the People: the Laws will therefore be generally made by Men little concern'd in, and unacquainted with their Effects & Consequences. (1.)

The Senate have the Power of altering all Money-Bills, and of originating Appropriations of Money, & the Salaries of the Officers of their own Appointment in conjunction with the President of the United States; altho' they are not the Representatives of the People, or amenable to them.

These with their other great Powers (vizt. their Power in the Appointment of Ambassadors & all public Officers, in making Treaties, & in trying all Impeachments) their Influence upon & connection with the supreme Executive from these Causes, their Duration of Office, and their being a constant existing Body almost continually sitting, join'd with their being one compleat Branch of the Legislature, will destroy any Balance in the Government, and enable them to accomplish what Usurpations they please upon the Rights & Liberties of the People.

The Judiciary of the United States is so constructed & extended, as to absorb & destroy the Judiciaries of the several States; thereby rendering Law as tedious intricate & expensive, and Justice as unattainable, by a great Part of the Community, as in England, and enabling the Rich to oppress & ruin the Poor.

The President of the United States has no constitutional Council (a thing unknown in any safe & regular Government) he will therefore be unsupported by proper Information & Advice; and will generally be directed by Minions & Favourites — or he will become a Tool to the Senate — or a Council of State will grow out of the principal Officers of the great Departments; the worst & most dangerous of all Ingredients for such a Council, in a free Country: for they may be induced to join in any dangerous or oppressive Measures, to shelter themselves, and prevent an Inquiry into their own Misconduct in Office; whereas had a constitutional Council been formed (as was proposed) of six Members; vizt. two from the Eastern, two from the Middle, and two from the Southern States, to be appointed by vote of the States in the House of Representatives, with the same Duration & Rotation of Office as the Senate, the Executive would always have had safe & proper Information & Advice, the President of such a Council might have acted as Vice President of the United States, pro tempore, upon any Vacancy or Disability of the chief Magistrate; and long continued Sessions of the Senate wou'd in a great Measure have been prevented.

From this fatal Defect of a constitutional Council has arisen the improper Power of the Senate, in the Appointment of public Officers, and the alarming Dependance & Connection between that Branch of the Legislature, and the supreme Executive.

Hence

(1.) This Objection has been in some Degree lessened by an Amendment, often before refused, and at last made by an Erasure, after the Engrossment upon Parchment, of the word forty, and inserting thirty, in the 3d. Clause of the 2d. Section of the 1st. Article.

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Hence also sprung that unnecessary & dangerous Officer the Vice President, who for want of other Employment, is made President of the Senate; thereby dangerously blending the executive & legislative Powers: besides always giving to some one of the States an unnecessary & unjust Pre-eminence over the others.

The President of the United States has the unrestrained Power of granting Pardons for Treason; which may be sometimes exercised to screen from Punishment those whom he had secretly instigated to commit the Crime, & thereby prevent a Discovery of his own Guilt.

By declaring all Treaties supreme Laws of the Land, the Executive & the Senate have in many Cases an exclusive Power of Legislation; which might have been avoided by proper Distinctions with respect to Treaties, and requiring the Assent of the House of Representatives, where it cou'd be done with Safety.

By requiring only a Majority to make all Commercial & Navigation Laws, the five Southern States (whose Produce & Circumstances are totally different from that of the eight Northern & Eastern States) will be ruined: for such rash & premature Regulations may be made, as will enable the Merchants of the Northern & Eastern States not only to demand an exorbitant Freight, but to monopolize the Purchase of the Commodities at their own Price, for many Years; to the great Injury of the landed Interest & Impoverishment of the People: and the Danger is the greater, as the Gain on one Side will be in Proportion to the Loss on the other. Whereas requiring two thirds of the Members present in both Houses wou'd have produced mutual Moderation, promoted the general Interest, and removed an insuperable Objection to the Adoption of the Government.

Under their own Construction of the general Clause at the End of the enumerated Powers, the Congress may grant Monopolies in Trade & Commerce, constitute new Crimes, inflict unusual & severe Punishments, and extend their Power as far as they shall think proper; so that the State Legislatures have no Security for the Powers now presumed to remain to them; or the People for their Rights.

There is no Declaration of any kind for preserving the Liberty of the Press, the Trial by Jury in civil Causes; nor against the Danger of standing Armies in time of Peace.

The State Legislatures are restrained from laying Export-Duties on their own Produce.

The general Legislature is restrained from prohibiting the further Importation of Slaves for twenty odd Years; tho' such Importations render the United States weaker, more vulnerable, and less capable of Defence.

Both the general Legislature & the State Legislatures are expressly prohibited making ex post facto Laws; tho' there never was, or can be a Legislature but must & will make such Laws, when Necessity & the public Safety require them; which will hereafter be a Breach of all the Constitutions in the Union, and afford Precedents for other Innovations.

This Government will commence in a moderate Aristocracy; it is at present impossible to foresee whether it will, in it's Operation, produce a Monarchy, or a corrupt oppressive Aristocracy; it will most probably vibrate some Years between the two, and then terminate in the one or the other.

(By Geo. Mason. See a reply in a letter from Mr Madison)

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