

Antifederalist No. 63

On the Organization and Powers of the Senate. (Part 2)

. . . . The senate is an assembly of 26 members, two from each state; though the senators are apportioned on the federal plan, they will vote individually. They represent the states, as bodies politic, sovereign to certain purposes. The states being sovereign and independent, are all considered equal, each with the other in the senate. In this we are governed solely by the ideal equalities of sovereignties; the federal and state governments forming one whole, and the state governments an essential part, which ought always to be kept distinctly in view, and preserved. I feel more disposed, on reflection, to acquiesce in making them the basis of the senate, and thereby to make it the interest and duty of the senators to preserve distinct, and to perpetuate the respective, sovereignties they shall represent. . . .

The senate, as a legislative branch, is not large, but as an executive branch quite too numerous. It is not to be presumed that we can form a genuine senatorial branch in the United States, a real representation of the aristocracy and balance in the legislature, any more than we can form a genuine representation of the people. Could we separate the aristocratical and democratical interest, compose the senate of the former, and the house of assembly of the latter, they are too unequal in the United State to produce a balance. Form them on pure principles, and leave each to be supported by its real weight and connections, the senate would be feeble and the house powerful. I say, on pure principles; because I make a distinction between a senate that derives its weight and influence from a pure source -- its numbers and wisdom, its extensive property, its extensive and permanent connections -- and a senate composed of a few men, possessing small property, and small and unstable connections, that derives its weight and influence from a corrupt or pernicious source: that is, merely from the power given it by the constitution and laws, to dispose of the public offices, and the annexed emoluments, and by those means to interest officers, and the hungry expectants of offices, in support of its measures. I wish the proposed senate may not partake too much of the latter description.

To produce a balance and checks, the constitution proposes two branches in the legislature. But they are so formed, that the members of both must generally be the same kind of men -- men having similar interests and views, feelings and connections -- men of the same grade in society, and who associate on all, occasions (probably, if there be any difference, the senators will be the most democratic.) Senators and representatives thus circumstanced, as men, though convened in two rooms to make laws, must be governed generally by the same motives and views, and therefore pursue the same system of politics. The partitions between the two branches will be merely those of the building in which they fit. There will not be found in them any of those genuine balances and checks, among the real different interests, and efforts of the several classes of men in the community we aim at. Nor can any such balances and checks be formed in the present condition of the United States in any considerable degree of perfection. . .

Though I conclude the senators and representatives will not form in the legislature those balances and checks which correspond with the actual state of the people, yet I approve of two branches, because we may notwithstanding derive several advantages from them. The senate, from the mode of its appointment, will probably be influenced to support the state governments; and, from its periods of service will produce stability in legislation, while frequent elections may take place in the other branch. There is generally a degree of competition between two assemblies even composed of the same kind of men; and by this, and by means of every law passing a revision in the second branch, caution, coolness, and deliberation are produced in the business of making laws. By means of a democratic branch we may particularly secure personal liberty; and by means of a senatorial branch we may particularly protect property. By the division, the house becomes the proper body to impeach all officers for misconduct in office, and the senate the proper court to try them; and in a country where limited powers must be lodged in the first magistrate, the senate, perhaps, may be the most proper body to be found to have a negative upon him in making treaties, and managing foreign affairs.

Though I agree the federal senate, in the form proposed, may be useful to many purposes, and that it is not very necessary to alter the organization, modes of appointment, and powers of it in several respects; yet, without alterations in others, I sincerely believe it will, in a very few years, become the source of the greatest evils. Some of these alterations, I conceive, to be absolutely necessary and some of them at least advisable.

1. By the confederation the members of congress are chosen annually. By Art. 1. Sect. 2. of the constitution, the senators shall be chosen for six years. As the period of service must be, in a considerable degree, matter of opinion on this head, I shall only make a few observations, to explain why I think it more advisable to limit it to three or four years.

The people of this country have not been accustomed to so long appointments in their state governments. They have generally adopted annual elections. The members of the present congress are chosen yearly, who, from the nature and multiplicity of their business, ought to be chosen for longer periods than the federal senators. Men six years in office absolutely contract callous habits, and cease, in too great a degree, to feel their dependence, and for the condition of their constituents. Senators continued in offices three or four years, will be in them longer than any popular erroneous opinions will probably continue to actuate their electors. Men appointed for three or four years will generally be long enough in office to give stability, and amply to acquire political information. By a change of legislators, as often as circumstances will permit, political knowledge is diffused more extensively among the people, and the attention of the electors and elected more constantly kept alive -- circumstances of infinite importance in a free country. Other reasons might be added, but my subject is too extensive to admit of my dwelling upon less material points.

2. When the confederation was formed, it was considered essentially necessary that the members of congress should at any time be recalled by their respective states, when the states should see fit, and others be sent in their room. I do not think it is less necessary that this principle should be extended to the members of congress under the new constitution, and especially to the senators. I have had occasion several times to observe, that let us form a federal constitution as extensively, and on the best principles in our power, we must, after all, trust a vast deal to a few men, who,

far removed from their constituents, will administer the federal government. There is but little danger these men will feel too great a degree of dependence. The necessary and important object to be attended to, is to make them feel dependent enough. Men elected for several years, several hundred miles distant from their states, possessed of very extensive powers, and the means of paying themselves, will not, probably, be oppressed with a sense of dependence and responsibility.

The senators will represent sovereignties, which generally have, and always ought to retain, the power of recalling their agents. The principle of responsibility is strongly felt in men who are liable to be recalled and censured for their misconduct; and, if we may judge from experience, the latter will not abuse the power of recalling their members; to possess it will at least be a valuable check. It is in the nature of all delegated power, that the constituents should retain the right to judge concerning the conduct of their representatives. They must exercise the power, and their decision itself, their approving or disapproving that conduct implies a right, a power to continue in office, or to remove from it. But whenever the substitute acts under a constitution, then it becomes necessary that the power of recalling him be expressed. The reasons for lodging a power to recall are stronger, as they respect the senate, than as they respect the representatives. The latter will be more frequently elected, and changed of course, and being chosen by the people at large, it would be more difficult for the people than for the legislatures to take the necessary measures for recalling. But even the people, if the powers will be more beneficial to them than injurious, ought to possess it. The people are not apt to wrong a man who is steady and true to their interests. They may for a while be misled by party representations, and leave a good man out of office unheard; but every recall supposes a deliberate decision, and a fair hearing. And no man who believes his conduct proper, and the result of honest views, will be the less useful in his public character on account of the examination his actions may be liable to. A man conscious of the contrary conduct ought clearly to be restrained by the apprehensions of a trial. I repeat it, it is interested combinations and factions we are particularly to guard against in the federal government, and all the rational means that can be put into the hands of the people to prevent them ought to be provided and furnished for them. Where there is a power to recall, trusty sentinels among the people, or in the state legislatures will have a fair opportunity to become useful. If the members in congress from the states join in such combinations, or favor them, or pursue a pernicious line of conduct, the most attentive among the people or in the state legislatures may formally charge them before their constituents. The very apprehensions of such constitutional charge may prevent many of the evils mentioned; and the recalling the members of a single state, a single senator or representative, may often prevent many more. Nor do I, at present, discover any danger in such proceedings, as every man who shall move for a recall will put his reputation at stake, to show he has reasonable grounds for his motion. It is not probable such motions will be made unless there be good apparent grounds for succeeding. Nor can the charge or motion be anything more than the attack of an individual or individuals unless a majority of the constituents shall see cause to go into the inquiry. Further, the circumstances of such a power being lodged in the constituents will tend continually to keep up their watchfulness, as well as the attention and dependence of the federal senators and representatives.

3. By the confederation it is provided, that no delegate shall serve more than three years in any term of six years; and thus, by the forms of the government a rotation of members is produced. A like principle has been adopted in some of the state governments, and also in some ancient and

modern republics. Whether this exclusion of a man for a given period, after he shall have served a given time, ought to be ingrafted into a constitution or not is a question, the proper decision [of which] materially depends upon the leading features of the government. Some governments are so formed as to produce a sufficient fluctuation and change of members; in the ordinary course of elections proper numbers of new members are from time to time brought into the legislature, and a proportionate number of old ones go out, mix, and become diffused among the people. This is the case with all numerous representative legislatures, the members of which are frequently elected, and constantly within the view of their constituents. This is the case with our state governments, and in them a constitutional rotation is unimportant. But in a government consisting of but a few members, elected for long periods, and far removed from the observation of the people, but few changes in the ordinary course of elections take place among the members. They become in some measure a fixed body, and often inattentive to the public good, callous, selfish, and the fountain of corruption. To prevent these evils, and to force a principle of pure animation into the federal government, which will be formed much in this last manner mentioned, and to produce attention, activity, and a diffusion of knowledge in the community, we ought to establish among others the principle of rotation. Even good men in office, in time, imperceptibly lose sight of the people, and gradually fall into measures prejudicial to them. It is only a rotation among the members of the federal legislature I shall contend for. Judges and officers at the heads of the judicial and executive departments are in a very different situation. Their offices and duties require the information and studies of many years for performing them in a manner advantageous to the people. These judges and officers must apply their whole time to the detail business of their offices, and depend on them for their support. Then, they always act under masters or superiors, and may be removed from office for misconduct. They pursue a certain round of executive business; their offices must be in all societies confined to a few men, because but few can become qualified to fill them. And were they, by annual appointments, open to the people at large, they are offices of such a nature as to be of no service to them. They must leave these offices in the possession of the few individuals qualified to fill them, or have them badly filled. In the judicial and executive departments also, the body of the people possess a large share of power and influence, as jurors and subordinate officers, among whom there are many and frequent rotations. But in every free country the legislatures are all on a level, and legislation becomes partial whenever, in practice, it rests for any considerable time in a few hands. It is the true republican principle to diffuse the power of making the laws among the people and so to modify the forms of the government as to draw in turn the well informed of every class into the legislature. To determine the propriety or impropriety of this rotation, we must take the inconveniences as well as the advantages attending it into view. On the one hand by this rotation, we may sometimes exclude good men from being elected. On the other hand, we guard against those pernicious connections, which usually grow up among men left to continue long periods in office. We increase the number of those who make the laws and return to their constituents; and thereby spread information, and preserve a spirit of activity and investigation among the people. Hence a balance of interests and exertions are preserved, and the ruinous measures of actions rendered more impracticable. I would not urge the principle of rotation, if I believed the consequence would be an uninformed federal legislature; but I have no apprehension of this in this enlightened country. The members of congress, at any one time, must be but very few compared with the respectable well informed men in the United States; and I have no idea there will be any want of such men for members of congress, though by a principle of rotation the constitution should exclude from being elected for two years those federal

legislators, who may have served the four years immediately preceding, or any four years in the six preceding years. If we may judge from experience and fair calculations, this principle will never operate to exclude at any one period a fifteenth part even of those men who have been members of congress. Though no man can sit in congress by the confederation more than three years in any term of six years, yet not more than three, four, or five men in any one state have been made ineligible at any one period. And if a good man happens to be excluded by this rotation, it is only for a short time. All things considered, the inconveniences of the principle must be very inconsiderable compared with the many advantages of it. It will generally be expedient for a man who has served four years in congress to return home, mix with the people, and reside some time with them. This will tend to reinstate him in the interests, feelings, and views similar to theirs, and thereby confirm in him the essential qualifications of a legislator. Even in point of information, it may be observed, the useful information of legislators is not acquired merely in studies in offices, and in meeting to make laws from day to day. They must learn the actual situation of the people by being among them, and when they have made laws, return home and observe how they operate. Thus occasionally to be among the people, is not only necessary to prevent or banish the callous habits and self-interested views of office in legislators, but to afford them necessary information, and to render them useful. Another valuable end is answered by it, sympathy, and the means of communication between them and their constituents, is substantially promoted. So that on every principle legislators, at certain periods, ought to live among their constituents. Some men of science are undoubtedly necessary in every legislature; but the knowledge, generally, necessary for men who make laws, is a knowledge of the common concerns, and particular circumstances of the people. In a republican government seats in the legislature are highly honorable. I believe but few do, and surely none ought to, consider them as places of profit and permanent support. Were the people always properly attentive, they would, at proper periods, call their lawmakers home, by sending others in their room. But this is not often the case; and therefore, in making constitutions, when the people are attentive, they ought cautiously to provide for those benefits, those advantageous changes in the administration of their affairs, which they are often apt to be inattentive to in practice. On the whole, to guard against the evils, and to secure the advantages I have mentioned, with the greatest degree of certainty, we ought clearly in my opinion, to increase the federal representation, to secure elections on proper principles, to establish a right to recall members, and a rotation among them.

THE FEDERAL FARMER