

Antifederalist No. 65

On the Organization and Powers of the Senate. (Part 4)

(By Gilbert Livingston and John Lansing delivered on June 24, 1788 to the New York ratifying convention.)

Mr. Gilbert LIVINGSTON rose, and addressed the chair.

He, in the first place, considered the importance of the Senate as a branch of the legislature, in three points of view: --

First, they would possess legislative powers coextensive with those of the House of Representatives except with respect to originating revenue laws; which, however, they would have power to reject or amend, as in the case of other bills. Secondly, they would have an importance, even exceeding that of the representative house, as they would be composed of a smaller number, and possess more firmness and system. Thirdly, their consequence and dignity would still further transcend those of the other branch, from their longer continuance in office. These powers, Mr. Livingston contended, rendered the Senate a dangerous body.

He went on, in the second place, to enumerate and animadvert on the powers with which they were clothed in their judicial capacity, and in their capacity of council to the President, and in the forming of treaties. In the last place, as if too much power could not be given to this body, they were made, he said, a council of appointment, by whom ambassadors and other officers of state were to be appointed. These are the powers, continued he, which are vested in this small body of twenty-six men; in some cases, to be exercised by a bare quorum, which is fourteen; a majority of which number, again, is eight. What are the checks provided to balance this great mass of power? Our present Congress cannot serve longer than three years in six: they are at any time subject to recall. These and other checks were considered as necessary at a period which I choose to honor with the name of virtuous. Sir, I venerate the spirit with which every thing was done at the trying time in which the Confederation was formed. America had then a sufficiency of this virtue to resolve to resist perhaps the first nation in the universe, even unto bloodshed. What was her aim? Equal liberty and safety. What ideas had she of this equal liberty? Read them in her Articles of Confederation. True it is, sir, there are some powers wanted to make this glorious compact complete. But, sir, let us be cautious that we do not err more on the other hand, by giving power too profusely, when, perhaps, it will be too late to recall it. Consider, sir, the great influence which this body, armed at all points, will have. What will be the effect of this? Probably a security of their reelection, as long as they please. Indeed, in my view, it will amount nearly to an appointment for life. What will be their situation in a federal town? Hallowed ground! Nothing so unclean as state laws to enter there, surrounded, as they will be, by an impenetrable wall of adamant and gold, the wealth of the whole country flowing into it. [Here a member, who did not fully understand called out to know what WALL the gentleman meant; on which he turned, and replied, "A wall of gold -- of adamant, which will flow in from all parts of

the continent." At which flowing metaphor, a great laugh in the house.] The gentleman continued: Their attention to their various business will probably require their constant attendance. In this Eden will they reside with their families, distant from the observation of the people. In such a situation, men are apt to forget their dependence, lose their sympathy, and contract selfish habits. Factions are apt to be formed, if the body becomes permanent. The senators will associate only with men of their own class, and thus become strangers to the condition of the common people. They should not only return, and be obliged to live with the people, but return to their former rank of citizenship, both to revive their sense of dependence, and to gain a knowledge of the country. This will afford opportunity to bring forward the genius and information of the states, and will be a stimulus to acquire political abilities. It will be the means of diffusing a more general knowledge of the measures and spirit of the administration. These things will confirm the people's confidence in government. When they see those who have been high in office residing among them as private citizens, they will feel more forcibly that the government is of their own choice. The members of this branch having the idea impressed on their minds, that they are soon to return to the level whence the suffrages of the people raised them, -- this good effect will follow: they will consider their interests as the same with those of their constituents, and that they legislate for themselves as well as others. They will not conceive themselves made to receive, enjoy, and rule, nor the people solely to earn, pay, and submit.

Mr. Chairman, I have endeavored, with as much perspicuity and candor as I am master of, shortly to state my objections to this clause. I would wish the committee to believe that they are not raised for the sake of opposition, but that I am very sincere in my sentiments in this important investigation. The Senate, as they are now constituted, have little or no check on them. Indeed, sir, too much is put into their hands. When we come to that part of the system which points out their powers, it will be the proper time to consider this subject more particularly.

I think, sir, we must relinquish the idea of safety under this government, if the time for services is not further limited, and the power of recall [not] given to the state legislatures. I am strengthened in my opinion by an observation made yesterday, by an honorable member from New York, to this effect "that there should be no fear of corruption of the members in the House of Representatives; especially as they are, in two years, to return to the body of the people." I therefore move that the committee adopt the following resolution, as an amendment to this clause: --

"Resolved, That no person shall be eligible as a senator for more than six years in any term of twelve years, and that it shall be in the power of the legislatures of the several states to recall their senators, or either of them, and to elect others in their stead, to serve for the remainder of the time for which such senator or senators, so recalled, were appointed."

Hon. Mr. [John] LANSING. I beg the indulgence of the committee, while I offer some reasons in support of the motion just made; in doing which, I shall confine myself to the point, and shall hear with attention, and examine with candor, the objections which may be opposed to it. . .

Sir, I am informed by gentlemen who have been conversant in public affairs, and who have had seats in Congress, that there have been, at different times, violent parties in that body -- an evil that a change of members has contributed, more than any other thing, to remedy. If, therefore,

the power of recall should be never exercised, if it should have no other force than that of a check to the designs of the bad, and to destroy party spirit, certainly no harm, but much good, may result from adopting the amendment. If my information be true, there have been parties in Congress which would have continued to this day, if the members had not been removed. No inconvenience can follow from placing the powers of the Senate on such a foundation as to make them feel their dependence. It is only a check calculated to make them more attentive to the objects for which they were appointed. Sir, I would ask, Is there no danger that the members of the Senate will sacrifice the interest of their state to their own private views? Every man in the United States ought to look with anxious concern to that body. Their number is so exceedingly small, that they may easily feel their interests distinct from those of the community. This smallness of number also renders them subject to a variety of accidents, that may be of the highest disadvantage. If one of the members is sick, or if one or both are prevented occasionally from attending, who are to take care of the interests of their state?

Sir, we have frequently observed that deputies have been appointed for certain purposes, who have not punctually attended to them, when it was necessary. Their private concerns may often require their presence at home. In what manner is this evil to be corrected? The amendment provides a remedy. It is the only thing which can give the states a control over the Senate. It will be said, there is a power in Congress to compel the attendance of absent members; but will the members from the other states be solicitous to compel such attendance, except to answer some particular view, or promote some interest of their own? If it be the object of the senators to protect the sovereignty of their several states, and if, at any time, it be the design of the other states to make encroachments on the sovereignty of any one state, will it be for their interest to compel the members from this state to attend, in order to oppose and check them? This would be strange policy indeed....

Sir, it is true there have been no instances of the success of corruption under the old Confederation; and may not this be attributed to the power of recall, which has existed from its first formation? It has operated effectually, though silently. It has never been exercised, because no great occasion has offered. The power has by no means proved a discouragement to individuals, in serving their country. A seat in Congress has always been considered a distinguished honor, and a favorite object of ambition. I believe no public station has been sought with more avidity. If this power has existed for so many years, and through so many scenes of difficulty and danger, without being exerted, may it not be rationally presumed that it never will be put in execution, unless the indispensable interest of a state shall require it? I am perfectly convinced that, in many emergencies, mutual concessions are necessary and proper; and that, in some instances, the smaller interests of the states should be sacrificed to great national objects. But when a delegate makes such sacrifices as tend to political destruction or to reduce sovereignty to subordination, his state ought to have the power of defeating his design, and reverting to the people. It is observed, that the appropriation of money is not in the power of the Senate alone; but, sir, the exercise of certain powers, which constitutionally and necessarily involve the disposal of money, belongs to the Senate. They have, therefore, a right of disposing of the property of the United States. If the Senate declare war, the lower house must furnish the supplies.

It is further objected to this amendment, that it will restrain the people from choosing those who

are most deserving of their suffrages, and will thus be an abridgment of their rights. I cannot suppose this last inference naturally follows. The rights of the people will be best supported by checking, at a certain point, the current of popular favor, and preventing the establishment of an influence which may leave to elections little more than the form of freedom. The Constitution of this state says, that no man shall hold the office of sheriff or coroner beyond a certain period. Does any one imagine that the rights of the people are infringed by this provision? The gentlemen, in their reasoning on the subject of corruption, seem to set aside experience and to consider the Americans as exempt from the common vices and frailties of human nature. It is unnecessary to particularize the numerous ways in which public bodies are accessible to corruption. The poison always finds a channel, and never wants an object. Scruples would be impertinent arguments would be in vain, checks would be useless, if we were certain our rulers would be good men; but for the virtuous government is not instituted. Its object is to restrain and punish vice; and all free constitutions are for with two views -- to deter the governed from crime, and the governors from tyranny.