

Antifederalist No. 75

A Note Protesting the Treaty-making Provisions of the Constitution

The following essay was penned anonymously by "Hampden," and it appeared in The Pittsburgh Gazette on February 16, 1788.

.... It may be freely granted, that from a mistaken zeal in favor of that political liberty which was so recently purchased at so costly a rate, even good men may give it [the constitution] unreasonable opposition; but such men cannot be reasonably charged with sordid personal interest as their motive -- because it is great and sudden changes which produces opportunities of preferment. But that class of men -- who either prompted by their own ambition or desperate fortunes, are expecting employments under the proposed plan; or those weak and ardent men who always expect to be gainers by revolutions, and who are never contented, but always hastening from one difficulty to another -- may be expected to ascribe every excellence to the proposed system, and to urge a thousand reasons for our real or supposed distresses, to induce our adopting thereof. Such characters may also be expected to promise us such extravagantly flattering advantages to arise from it, as if it was accompanied with such miraculous divine energy as divided the Red Sea, and spoke with thunder on Mount Sinai. . . .

The first clause of the constitution assures us, that the legislative powers shall be vested in a Congress, which shall consist of a senate and house of representatives; and in the second clause of the second article, it is declared that the president, by and with the consent of the senate, is to make treaties. Here the supreme executive magistrate is officially connected with the highest branch of the legislature. And in article sixth, clause second, we find that all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. When we consider the extent of treaties -- that in fixing the tariff of trade, the imposts and port duties generally are or may be fixed by a large construction which interested rulers are never at a loss to give to any constitutional power -- treaties may be extended to almost every legislative object of the general government. Who is it that does not know, that by treaties in Europe the succession and constitution of many sovereign states, has been regulated. The partition treaty, and the war of the grand alliance, respecting the government of Spain, are well remembered; nor is it long since three neighboring powers established a nobleman of that nation upon the throne and regulated and altered the fundamental laws of that country, as well as divided the territory thereof, and all this was done by treaty. And from this power of making treaties, the house of representatives, which has the best chance of possessing virtue, and public confidence, is entirely excluded. Indeed, I see nothing to hinder the president and senate, at a convenient crisis, to declare themselves hereditary and supreme, and the lower house altogether useless, and to abolish what shadow of the state constitutions remain by this power alone; and as the president and senate have all that influence which arises from the creating and appointing of all offices and officers, who can doubt but at a proper occasion they

will succeed in such an attempt? And who can doubt but that men will arise who will attempt it? Will the doing so be a more flagrant breach of trust, or a greater degree of violence and perfidy, than has already been practiced in order to introduce the proposed plan? . . . Of the same kind, and full as inconsistent and dangerous, is the first clause of the second article, compared with the second clause of the second section. We first find the president fully and absolutely vested with the executive power, and presently we find the most important and most influential portion of the executive power -- e.g., the appointment of all officers -- vested in the senate, with whom the president only acts as a nominating member. It is on this account that I have said above, that the greatest degree of virtue may be expected in the house of representatives; for if any considerable part of the executive power be joined with the legislature, it will as surely corrupt that branch with which it is combined, as poison will the human body. Therefore, though the small house of representatives will consist of the natural aristocracy of the country, as well as the senate, yet not being dangerously combined with the executive branch, it has not such certain influential inducements to corruption. . .

It will be asked, no doubt, who is this that dares so boldly to arraign the conduct and censure the production of a convention composed of so chosen a band of patriots? To this I answer, that I am a freeman, and it is the character of freemen to examine and judge for themselves. They know that implicit faith respecting politics is the handmaid to slavery; and that the greatness of those names who frame a government, cannot sanctify its faults, nor prevent the evils that result from its imperfections. . . .

With respect to the majority, I do not doubt the testimony of a dignified supporter of the system, that they were all, or nearly all, eminent lawyers; but I do doubt the patriotism and political virtue of several of the most eminently active of them. But it is not with the men, but with the plan to which they gave birth, we have to contend, and to contend with such a degree of moderation and firmness, as will best promote political security, shall be the endeavor of

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