LETTER XIV.

January 17, 1788.

Dear sir,

To continue the subject of appointments: — Officers, in the fifth place, may be appointed by the heads of departments or courts of law. Art. 2. sect. 2. respecting appointments, goes on — "But congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments." The probability is, as the constitution now stands, that the senate, a branch of the legislature, will be tenacious of the power of appointment, and much too sparingly part with a share of it to the courts of law, and heads of departments. Here again the impropriety appears of the senate's having, generally, a share in the appointment of officers. We may fairly presume, that the judges, and principal officers in the departments, will be able well informed men in their respective branches of business; that they will, from experience, be best informed as to proper persons to fill inferior offices in them; that they will feel themselves responsible for the execution of their several branches of business, and for the conduct of the officers they may appoint therein. — From these, and other considerations, I think we may infer, that impartial and judicious appointments of subordinate officers will, generally, be made by the courts of law, and the heads of departments. This power of distributing appointments, as circumstances may require, into several hands, in a well formed disinterested legislature, might be of essential service, not only in promoting beneficial appointments, but, also, in preserving the balance in government: a feeble executive may be strengthened and supported by placing in its hands more numerous appointments; an executive too influential may be reduced within proper bounds, by placing many of the inferior appointments in the courts of law, and heads of departments; nor is there much danger that the executive will be wantonly weakened or strengthened by the legislature, by thus shifting the appointments of inferior officers, since all must be done by legislative acts, which cannot be passed without the consent of the executive, or the consent of two thirds of both branches — a good legislature will use this power to preserve the balance and perpetuate the government. Here again we are brought to our ultimatum: — is the legislature so constructed as to deserve our confidence?

6. Officers may be appointed by the state governments. By art. 1. sect. 8, the respective states are authorised exclusively to appoint the militia-officers. This not only lodges the appointments in proper places, but it also tends to distribute and lodge in different executive hands the powers of appointing to offices, so dangerous when collected into the hands of one or a few men.

It is a good general rule, that the legislative, executive, and judicial powers, ought to be kept distinct; but this, like other general rules, has its exceptions; and without these exceptions we cannot form a good government, and properly balance its parts: and we can determine only from reason, experience, and a critical inspection of the parts of the government, how far it is proper to intermix those powers. Appointments, I believe, in all mixed governments, have been assigned to different hands — some are made by the executive, some by the legislature, some by the judges, and some by the people. It has been thought advisable by the wisest nations, that the legislature should so far exercise executive and judicial powers as to appoint some officers, judge of the elections of its members, and impeach and try officers for misconduct — that the executive should have a partial share in legislation — that judges should appoint some subordinate officers, and regulate so far as to establish rules for their own proceedings. Where the members of the government, as the house, the senate, the executive, and judiciary, are strong and complete, each in itself, the balance is naturally produced, each party may take the powers congenial to it, and we have less need to be anxious about checks, and the subdivision of powers.

If after making the deductions, already alluded to, from the general power to appoint federal officers the residuum shall be thought to be too large and unsafe, and to place an undue influence in the hands of the president and council, a further deduction may be made, with many advantages, and, perhaps, with but a few inconveniencies; and that is, by giving the appointment of a few great officers to the legislature — as of the commissioners of the treasury — of the comptroller, treasurer, master coiner, and some of the principal officers in the money department — of the sheriffs or marshalls of the United States — of states attorneys, secretary of the home department, and secretary at war, perhaps, of the judges of the supreme court — of major-generals and admirals. The appointments
of these officers, who may be at the heads of the great departments of business, in carrying into execution the national system, involve in them a variety of considerations; they will not often occur and the power to make them ought to remain in safe hands. Officers of the above description are appointed by the legislatures in some of the states, and in some not. We may, I believe, presume that the federal legislature will possess sufficient knowledge and discernment to make judicious appointments: however, as these appointments by the legislature tend to increase the mixture of power, to lessen the advantages of impeachments and responsibility, I would by no means contend for them any further than it may be necessary for reducing the power of the executive within the bounds of safety. To determine, with propriety, how extensive power the executive ought to possess relative to appointments, we must also examine the forms of it, and its other powers; and these forms and other powers I shall now proceed briefly to examine.

By art. 2. sect. 1. the executive power shall be vested in a president elected for four years, by electors to be appointed from time to time, in such manner as the state legislatures shall direct — the electors to be equal in numbers to the federal senators and representatives: but congress may determine the time of chusing senators [i.e. electors], and the day on which they shall give their votes; and if no president be chosen by the electors, by a majority of votes, the states, as states in congress, shall elect one of the five highest on the list for president. It is to be observed, that in chusing the president, the principle of electing by a majority of votes is adopted; in chusing the vice president, that of electing by a plurality. Viewing the principles and checks established in the election of the president, and especially concerning the several states may guard the appointment of the electors as they shall judge best, I confess there appears to be a judicious combination of principles and precautions. Were the electors more numerous than they will be, in case the representation be not increased, I think, the system would be improved; not that I consider the democratic character so important in the choice of the electors as in the choice of representatives: be the electors more or less democratic, the president will be one of the very few of the most elevated characters. But there is danger, that a majority of a small number of electors may be corrupted and influenced, after appointed electors, and before they give their votes, especially if a considerable space of time elapse between the appointment and voting. I have already considered the advisory council in the executive branch: there are two things further in the organization of the executive, to which I would particularly draw your attention: the first, which, is a single executive. I confess, I approve; the second, by which any person from period to period may be re-elected president, I think very exceptional.

Each state in the union has uniformly shewn its preference for a single executive, and generally directed the first executive magistrate to act in certain cases by the advice of an executive council. Reason, and the experience of enlightened nations, seem justly to assign the business of making laws to numerous assemblies; and the execution of them, principally, to the direction and care of one man. Independent of practice a single man seems to be peculiarly well circumstanced to superintend the execution of laws with discernment and decision, with promptitude and uniformity: the people usually point out a first man — he is to be seen in civilized as well as uncivilized nations — in republics as well as in other governments. In every large collection of people there must be a visible point serving as a common centre in the government, towards which to draw their eyes and attachments. The constitution must fix a man, or a congress of men, superior in the opinion of the people, to the most popular men in the different parts of the community, else the people will be apt to divide and follow their respective leaders. Aspiring men, armies and navies, have not often been kept in tolerable order by the decrees of a senate or an executive council. The advocates for lodging the executive power in the hands of a number of equals, as an executive council, say, that much wisdom may be collected in such a council, and that it will be safe; but they agree, that it cannot be so prompt and responsible as a single man — they admit that such a council will generally consist of the aristocracy, and not stand so indifferent between it and the people as a first magistrate. But the principal objection made to a single man is, that when possessed of power he will be constantly struggling for more, disturbing the government, and encroaching on the rights of others. It must be admitted, that men, from the monarch down to the porter, are constantly aiming at power and importance and this propensity must be as constantly guarded against in the forms of the government. Adequate powers must be delegated to those who govern, and our security must be in limiting, defining, and guarding the exercise of them, so that those given shall not be abused, or made use of for openly or secretly seizing more. Why do we believe this abuse of power peculiar to a first magistrate? Is it because in the wars and contests of men, one man has often established his power over the rest? Or are men naturally fond of accumulating powers in the hands of one man? I do not see any similitude between the cases of those tyrants, who have sprung up in the midst of wars and tumults, and the cases of limited
executives in established governments; nor shall we, on a careful examination, discover much likeness between the
executives in Sweden, Denmark, Holland, &c. which have, from time to time, increased their powers, and become
more absolute, and the executives, whose powers are well ascertained and defined, and which remain, by the
constitution, only for a short and limited period in the hands of any one man or family. A single man, or family,
can long and effectually direct its exertions to one point. There may be many favourable opportunities in the course
of a man's life to seize on additional powers, and many more where powers are hereditary; and there are many
circumstances favourable to usurpations, where the powers of the man or family are undefined, and such as often
may be unduly extended before the people discover it. If we examine history attentively, we shall find that such
exertions, such opportunities, and such circumstances as these have attended all the executives which have usurped
upon the rights of the people, and which appear originally to have been, in some degree, limited. Admitting that
moderate and even well defined powers, long in the hands of the same man or family, will, probably, be
unreasonably increased, it will not follow that even extensive powers placed in the hands of a man only for a few
years will be abused. The Roman consuls and Carthaginian suffetes possessed extensive powers while in office;
but being annually appointed, they but seldom, if ever, abused them. The Roman dictators often possessed absolute
power while in office; but usually being elected for short periods of time, no one of them for ages usurped upon
the rights of the people. The kings of France, Spain, Sweden, Denmark, &c. have become absolute merely from the
encroachments and abuse of power made by the nobles. As to kings, and limited monarchs, generally, history
furnishes many more instances in which their powers have been abridged or annihilated by the nobles or people, or
both, than in which they have been increased or made absolute; and in almost all the latter cases, we find the people
were inattentive and fickle, and evidently were not born to be free. I am the more particular respecting this subject,
because I have heard many mistaken observations relative to it. Men of property, and even men who hold powers
for themselves and posterity, have too much to lose, wantonly to hazard a shock of the political system; the game
must be large, and the chance of winning great, to induce them to risque what they have, for the uncertain prospect
of gaining more. Our executive may be altogether elective, and possess no power, but as the substitute of the
people, and that well limited, and only for a limited time. The great object is, in a republican government, to guard
effectually against perpetuating any portion of power, great or small, in the same man or family; this perpetuation
of power is totally uncongenial to the true spirit of republican governments: on the one hand the first executive
magistrate ought to remain in office so long as to avoid instability in the execution of the laws; on the other, not so
long as to enable him to take any measures to establish himself. The convention, it seems, first agreed that the
president should be chosen for seven years, and never after to be eligible. Whether seven years is a period too long
or not, is rather matter of opinion; but clear it is, that this mode is infinitely preferable to the one finally adopted.
When a man shall get the chair, who may be re-elected, from time to time, for life, his greatest object will be to
keep it; to gain friends and votes, at any rate; to associate some favourite son with himself, to take the office after
him: whenever he shall have any prospect of continuing the office in himself and family, he will spare no artifice,
no address, and no exertions, to increase the powers and importance of it; the servile supporters of his wishes will
be placed in all offices, and tools constantly employed to aid his views and sound his praise. A man so situated will
be more absolute, and the executives, whose powers are well ascertained and defined, and which remain, by the
constitution there must be a constant transfer of it from one man to another, and consequently from one family to
another. No man will wish to be a mere cypher at the head of the government: the great object of each president
then will be, to render his government a glorious period in the annals of his country. When a man constitutionally
retires from office, he retires without pain; he is sensible he retires because the laws direct it, and not from the
success of his rivals, nor with that public disapprobation which being left out, when eligible, implies. It is said, that
a man knowing that at a given period he must quit his office, will unjustly attempt to take from the public, and lay
in store the means of support and splendour in his retirement; there can, I think, be but very little in this
observation. The same constitution that makes a man eligible for a given period only, ought to make no man
eligible till he arrive to the age of forty or forty-five years: if he be a man of fortune, he will retire with dignity to his estate; if not, he may, like the Roman consuls, and other eminent characters in republics, find an honorable support and employment in some respectable office. A man who must, at all events, thus leave his office, will have but few or no temptations to fill its dependant offices with his tools, or any particular set of men: whereas the man constantly looking forward to his future elections, and, perhaps, to the aggrandizement of his family, will have every inducement before him to fill all places with his own props and dependants. As to public monies, the president need handle none of them, and he may always rigidly be made [to] account for every shilling he shall receive.

On the whole, it would be, in my opinion, almost as well to create a limited monarchy at once, and give some family permanent power and interest in the community, and let it have something valuable to itself to lose in convulsions in the state, and in attempts of usurpation, as to make a first magistrate eligible for life, and to create hopes and expectations in him and his family, of obtaining what they have not. In the latter case, we actually tempt them to disturb the state, to foment struggles and contests, by laying before them the flattering prospect of gaining much in them without risking any thing.

The constitution provides only that the president shall hold his office during the term of four years; that, at most, only implies, that one shall be chosen every fourth year; it also provides, that in case of the removal, death, resignation, or inability, both of the president and vice-president, congress may declare what officer shall act as president; and that such officers shall act accordingly, until the disability be removed, or a president shall be elected: it also provides that congress may determine the time of chusing electors, and the day on which they shall give their votes. Considering these clauses together, I submit this question — whether in case of a vacancy in the office of president, by the removal, death, resignation, or inability of the president and vice-president, and congress should declare, that a certain officer, as secretary for foreign affairs, for instance, shall act as president, and suffer such officer to continue several years, or even for his life, to act as president, by omitting to appoint the time for chusing electors of another president, it would be any breach of the constitution? This appears to me to be an intended provision for supplying the office of president, not only for any remaining portion of the four years, but in cases of emergency, until another president shall be elected; and that at a period beyond the expiration of the four years: we do not know that it is impossible; we do not know that it is improbable, in case a popular officer should thus be declared the acting president, but that he might continue for life, and without any violent act, but merely by neglects and delays on the part of congress.

I shall conclude my observations on the organization of the legislature and executive, with making some remarks, rather as a matter of amusement, on the branch, or partial negative, in the legislation: — The third branch in the legislature may answer three valuable purposes, to impede in their passage hasty and intemperate laws, occasionally to assist the senate or people, and to prevent the legislature from encroaching upon the executive or judiciary. In Great Britain the king has a complete negative upon all laws, but he very seldom exercises it. This may be well lodged in him, who possesses strength to support it, and whose family has independent and hereditary interests and powers, rights and prerogatives, in the government, to defend: but in a country where the first executive officer is elective, and has no rights, but in common with the people, a partial negative in legislation, as in Massachusetts and New-York, is, in my opinion, clearly best: in the former state, as before observed, it is lodged in the governor alone; in the latter, in the governor, chancellor, and judges of the supreme court — the new constitution lodges it in the president. This is simply a branch of legislative power, and has in itself no relation to executive or judicial powers. The question is, in what hands ought it to be lodged, to answer the three purposes mentioned the most advantageously? The prevailing opinion seems to be in favour of vesting it in the hands of the first executive magistrate. I will not say this opinion is ill founded. The negative, in one case, is intended to prevent hasty laws, not supported and revised by two-thirds of each of the two branches; in the second, it is to aid the weaker branch; and in the third, to defend the executive and judiciary. To answer these ends, there ought, therefore, to be collected in the hands which hold this negative, firmness, wisdom, and strength; the very object of the negative is occasional opposition to the two branches. By lodging it in the executive magistrate, we give him a share in making the laws, which he must execute; by associating the judges with him, as in New-York, we give them a share in making the laws, upon which they must decide as judicial magistrates; this may be a reason for excluding the judges: however, the negative in New-York is certainly well calculated to answer its great purposes: the governor and judges united must possess more firmness and strength, more wisdom and information, than
either alone, and also more of the confidence of the people; and as to the balance among the departments, why should the executive alone hold the scales, and the judicial be left defenceless? I think the negative in New-York is found best in practice; we see it there frequently and wisely put upon the measures of the two branches; whereas in Massachusetts it is hardly ever exercised, and the governor, I believe, has often permitted laws to pass to which he had substantial objections, but did not make them; he, however, it is to be observed, is annually elected.