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CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, December 9.

Debate on the AMENDMENT to the CONSTITUTION.

(Continued.)

Mr. DENNIS. Encouraged by the indulgent attention with which the remarks of other gentlemen have been received, I will submit to the consideration of the House, some observations on the resolution before us. Not having been present when the resolution, which originated in this House, containing alone the discriminating principle, was under consideration, and which it is presumed was fully discussed, because, that point was exclusively considered, and deprived of the benefit of the elaborate and learned argument of the Senate in relation to that principle, I should not have offered myself to the consideration of the House, if there had not been incorporated into the resolution, other principles which have been but little investigated, and which though called subordinate principles, I conceive to be as important as the principle of designation itself.

The friends of the resolution, aware of the influence of names, have chosen to call the two last, secondary principles, have omitted to discuss them themselves, and have presumed that others would regard them as subordinate principles, because they have chosen so to denominate them. It may, however, be shewn, that these principles, acknowledged on all hands to be obnoxious even to many of those who favour what I will call the pre-eminent principle, & which they are admonished to surrender, to obtain that object, are far from being so innocent and unimportant as is represented; and that the last one goes essentially to impair if not entirely to defeat the favorite principle of designation itself.

As far as I have been able to develope the leading argument in favour of a discrimination, it is, that, by such distinction we shall ensure the compleat controul of the public will, and that the man intended as the secondary, may never become the primary character. But, according to the last member of the resolution, instead of assuring to us that object, in every case where no one candidate shall have a majority of all the votes of the electors, and where by any means or contrivance, a choice in this House can be prevented, the person designated as Vice President becomes the President.

In considering the combined but warring principles of this resolution, we are not to consider their tendency, simply in the present state of things; but look to a period when our states and our political parties shall have multiplied their numbers—Scarcely does the Earth perform her annual revolution, without adding to our existing numbers a sister state; and I will venture to predict, that many years will not have passed away, when this nation will be divided into three or four political parties. As your states and those parties augment their respective numbers, so will increase the difficulty of procuring a majority of electoral voices in favour of any individual—Admit that the designating principle may render it less probable that the election shall be brought into this House, as in the case of a tie, the case of a non-election by the electoral bodies for the reasons before assigned, on account of no one candidate having a majority of votes, may frequently occur. For, let it be remembered, that the case will be but little affected by the discriminating principle. When the election shall be brought into this House the increase of states and of parties will in like manner as in the electoral bodies, render it extremely difficult (even without the influence of fraud or corruption to prevent it,) to effect an union of a sufficient number of members voting by states, where there may be a number of candidates to give any one of them a majority of the states. A non-election by this House then by this resolution is precisely equivalent to an election of the man to the Presidency who was intended as the Vice-President; because by the last member of the resolution if no choice be made in the House by the fourth of March, then the Vice-President already chosen by the Senate, is to become the President. Thus it is that by the magical operation of these conflicting principles, you do the very thing you mean to prevent, and elect the man intended as a secondary character to the chief executive magistracy.

Again, sir, in order to secure the certainty of electing a man of the people, you throw the whole weight of the Senatorial branch and of the Vice-President who have nothing to do but to defeat an election here to make him President, into that scale which is opposed to the public will; and you hold out a temptation to the exercise of every species of contrivance which the mind of man stimulated by a love of power and possessed of allurements to acquire it, may suggest and put into motion in this House, to preponderate the balance on the side of a non-election; which non-election is tantamount to an election by the Senate of their President to be the President of the United States.

Nor will the weight of that body be realized alone when the election shall be brought here; but may be exerted in the first instance to multiply candidates, perplex and divide the electoral bodies, and prevent, in them, a majority in favour of any one candidate; so as to bring as many as practicable into this body in order that they may again perplex and obstruct it.

Surely, Mr. Speaker, the Senate ought to have been satisfied, (determined as they have been to innovate on the constitution in a point never contemplated by any but themselves,) to have provided that the election of their President, a secondary character, should vest him with the powers, emoluments and patronage of the high office of President of this great nation; so long and no longer than an election should be made. This would have taken away that strong inducement to intrigue and corruption, which results from exhibiting to human frailty the important price of the chief Magistracy of this country, for four succeeding years. I was about to move such a modification or extension of that principle in committee of the whole; but we were told, nay, the friends of the principle of designation were told, that all efforts at amendment, even for changing an obscure and unintelligible phraseology, differently construed by those who held this language too, would be vain and illusory. These intimations have since grown into fact, in the rejection of the resolution this morning submitted by a gentleman from Pennsylvania (Mr. Hoge)—Yes, sir, we are told, that although the discriminating principle is the only one to which the public attention has been invited and the only one embraced in the resolution of this House, yet it must be adopted because the other branch of the legislature, not deigning to consider the resolution of this House, have incorporated into it a principle, vesting in their own body, a novel and important power; and that they will not adopt the one without the other.

But, Mr. Speaker, let me here in a particular manner address myself to those gentlemen who are favorable to the designating principle and who acknowledge the other to be extremely obnoxious. Can you discharge your duty to your constituents who have required the one and not the other; and reconcile it to your conscience to take the resolution as it stands? You are told the last is a subordinate principle and must be yielded to effectuate the main design. Is that a subordinate principle which transfers the choice in any contingency from this House to the Senate? Is that a minor principle which not only makes that transfer from the immediate representatives of the people, to a body much less responsible to the public, but changes the mode of voting by states to a vote *per capita*?

You are told the object of amending the constitution is to conform the choice of the President to the will of the people. But is this object attained by holding out temptations to frustrate that will in the first place, and transferring the jurisdiction from the House of Representatives to the Senate in the second?

But you are told you must do so, otherwise the Senate will not agree to your principle of designation. Other gentlemen may be in possession of means of individual information to which I am a stranger, but sure I am, we do not possess that information as a body, which warrants the assertion. Have you ever asked them to recede or signified your wishes on the subject? Has not every effort of the kind been rejected by this House? Shall it be said that whilst our rules indicate the propriety of this course in case of a difference between the two branches, in ordinary legislation, we will not make one attempt to expunge from the resolution, principles which almost all of us declare to be repugnant to our wishes?

You are told that the people of the United States and the legislatures of the states imperiously demand a change of the constitution. In relation to the discriminating principle, let it be conceded; but have the people or the states required you to transfer your own power to the Senate, and has the declamation respecting the will of the people, any application to the two last principles of the resolution? No—I will venture to assert that this ingenious contrivance had its origin in the other branch of the legislature.

We are told we have only the initiative in this business, and our acts are to undergo the revision of the state legislatures; and therefore the less need for that caution and deliberation which might otherwise be requisite. It would be a very poor excuse in a judge of an inferior court to say he was less sedulous to understand a legal question and to decide correctly upon it, because his decision would be revised by a superior tribunal. We should not transfer into the hands of others, that trust which is confided to ourselves. I will not say that there is no individual in any state legislature who is possessed of as much knowledge as any individual here; but I will say that it is not to be calculated that the legislative body of any state possesses as much collective knowledge as does this House, of a subject affecting, not only individuals, but states differently situate, in regard to geographical position, population, wealth and interests. That the decision of this House will have its influence on the state legislatures is not to be doubted, and therefore we should scrutinize the contrarient principles of the resolution and go as far as practicable to remove its defects.

I have said in the course of the discussion on some incidental questions, that to say, I would in no case change the constitution, would be using anti-constitutional doctrines, because the instrument contains within it a principle of its amendation, and it may be necessary to conform it to new circumstances and contingencies as they emerge. But I have also said and beg leave to repeat it, that to induce a change of it, the existing evil ought to be clearly demonstrated, and the aptitude of the remedy proposed to effectuate the object, ought to be unequivocally established. The alteration of the constitution of the United States, is of a more delicate nature, than to change that of a single state. In one case you have only to quiet the apprehensions and compose the disquietudes of discordant individuals; in the other to disarm the jealousies and reconcile the interests of jarring states. To this distinction, those gentlemen who have reposed the whole argument on the basis of the popular will, have not sufficiently attended.

A gentleman from Tennessee (Mr. Campbell) and other gentlemen who have advocated the adoption of the resolution, have informed us that this constitution was adopted by, and that the departments ought to be organized according to the dictates of a majority of the people. Admit it to be so, and that the designating principle will produce the effect, I have endeavored to shew the whole resolution will defeat it. But I beg leave to enter my dissent to their theory of our government. That the will of the majority in a republican government and in a single state, must and ought to prevail I do not deny; but I wholly deny this to be the theory of the American confederacy. The constitution of the United States was not adopted by the people of the United States, but by the people of the several states as such, voting through the medium of their state conventions; and so far from its being adopted by the people of the United States as such, it is doubtful whether it was not adopted by a minority of the people, though ratified and confirmed by a majority of the adopting states. North Carolina and Rhode-Island rejected it, and in Virginia, Pennsylvania and New-York, the minorities were powerful. The minority in Virginia and Pennsylvania alone were more than equal to countervail the majorities of five or six of the smaller states—so that if the vote had been taken by the whole American people voting together, it is doubtful if it had ever been adopted.

When we view it in relation to the organization of the departments, they are equally mistaken. The House of Representatives, which partakes most of the popular or consolidated principle, is not chosen by the will of the people of the United States, but in different manners by the people of the respective states. The Senate partakes in its mode of appointment exclusively of the federative principle, without regard to the number of individuals contained in the several states.

When we come to the organization of the Executive department, we find an intermixture of federative and popular or consolidated principles, combined and interwoven with so delicate a hand, that it is impossible to strip it of the one without destroying the other. The electors who chuse the President are not chosen in a manner to ascertain the sense of the people of the United States, but are chosen in some states by the legislatures, in others by the people voting in a general ticket, and smothering the voice of the minority; whilst in others the choice is made by the people voting in districts, and giving the proportional weight to the minority.—The number of electors likewise assigned to the different states, depend on the combined number of the Senators and Representatives of each state in the Congress of the United States—so that a state having one Representative has two votes on the federative principle to one on the popular principle. The result of this analysis of the constitution will satisfy gentlemen that state interests are materially affected by this amendment; and that the public will, always equivocal, is not the only thing to be considered in this particular. Indeed, Sir, it proves to them that instead of giving compleat effect to the popular will, the choice of the electors is made through the medium of so refined a process, and in so artificial a manner, that it may happen that a majority of the electors may be chosen and the President elected by a minority of the people. I believe, Sir, a President of the United States has been elected by a minority of the people of the United States.

We have been told that numerous amendments have been made to the constitution and it is therefore proved by experience that those state jealousies and other dangers which are represented as likely to arise from this amendment, have no place except in the imagination of the opponents of the resolution. I think I shall not be considered as metaphysical however, when I declare that, there occurs to my mind a material distinction between an amendment which goes merely to enlarge or abridge the legislative power, or the power of any given department, and one which materially changes the manner in which one of the departments itself is organized. All the amendments heretofore made are of the first description, operating merely on the popular, and affecting in nowise the federative principle, there was no ground for local jealousy. But in this case for the first time you are affecting the organization of the departments and of course the federative principle; and the arguments used in this discussion have but too well demonstrated the state jealousies and inquietudes likely to result from every such amendment, between the large and smaller states. Representing a state which occupies and is likely to maintain for a long time to come a middle position in the union; I have not critically examined whether the resolution will operate for or against the one or the other—but I know that there are jealousies on this subject, and we ought to be cautious not to fan the flame. If there be individuals in this nation hostile to the union (and we have been admonished that such exist) let us be cautious how we put into their mouths, the strongest arguments to effectuate their designs, and let me again repeat it, there must always exist great inquietude both amongst states and individuals, wherever you attempt to change the mode of organizing a department, and every amendment you make tends to weaken the bond of our union. The ideas of the friends of the resolution on the subject of changes in the constitution therefore is wholly erroneous, when they suppose there is nothing to be considered but what they call the public will; and they have made the mistake by regarding our confederacy as a consolidated government. But it partakes of this equality in no instance except in the operation of its laws. Here it reaches our citizens as one people, regardless of state limits and state inequalities. It is this property alone which forms the distinguishing characteristic between that system and the confederation. Here we operate upon the people and there they operated on states through the medium of requisitions. I am sensible I have availed myself to the full extent of the patience of the committee and shall conclude with an exhortation that we do nothing which may affect the harmony of our union; and that we revise and revise again this resolution, before we stamp it with our sanction.

Mr. JACKSON. Mr. Speaker, when I came to the House this morning, nothing was more foreign to my intention, than to trespass upon their indulgence, but the importance of the subject, and the bold and daring assertions, made by gentlemen in the opposition, will be my apology for the remarks I shall make, and I promise the House, as a remuneration for the attention they may honor me with, to be as concise as possible.—Sir, I must call that a bold and daring assertion, made by the gentleman from North Carolina (Mr. Purviance) that if the small states had contemplated a change in the constitution and had not considered it as inviolable and intangible, they would not have come into the union—when I look at the constitution and see used, not vague expressions, or dubious language admitting of its amendment; but an express article to wit, the 5th, authorising amendments and designating the mode by which they may be obtained, which declares that,

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or, on application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by Congress."

And when I consider the perspicuous and emphatical language used by its framers, that they have not inserted a single clause not intended to have a full meaning, and that they were incapable of holding forth a feature in the constitution which should be construed contrary to the plain acceptation of it—I am induced to believe, that the gentleman has not paid a proper attention to the subject, or he would not have hazarded the observation.

The same gentleman has said, we are about to encourage, fraud, intrigue, venality and corruption, by the passage of this resolution; my respect for decorum and the rules of this House prevents me from answering this assertion in the language it deserves. I may, however, be permitted to say that the reverse will be the case—and I contend that there is more danger that fraud, intrigue, venality and corruption, will be practised in cases resulting from the constitution as it now stands, than there will be under the amendment before us, if adopted. To illustrate my position, I will suppose an understanding and agreement among the states, (for without them no election of President can take place) that A shall be supported as President, and B as Vice President, will not the importance of the office, and the probability of success, under the want of the discriminating principle warrant the assertion that there is great danger of intrigue, to secure the election of B the ostensible candidate for the office of Vice President to the presidential chair, by reducing some of the electors in one of the states to violate the agreement thus made with the sister states, in voting for him only, whom none but themselves, and those active in the intrigue contemplate to be President, and thereby a President will be crammed upon us, whom nine tenths of the people never thought of. Much has been said by gentlemen respecting the spirit of compromise and accommodation which governed the framers of the constitution, and it is contended that this spirit of accommodation and compromise will be materially affected and one of the main principles of the constitution violated by this amendment. I admit that a spirit of compromise and accommodation influenced some of the framers of that instrument, but I deny that it was mutual. There certainly was a noble magnanimity evinced in the accommodating spirit of the representatives of the large states to induce the small states to come into the union, but that spirit was not reciprocal—I believe that those who represented the large states justly estimated the danger and rivalries of neighboring states, if not subject to one confederated government competent to their individual protection. The fate of other little republics warranted the idea that the smaller members would be swallowed up by the larger ones, who would in turn attack each other; and thus the liberty atchieved by the blood of some of the bravest men that ever lived would pass away without leaving a trace behind it. They therefore yielded every thing to the little states, knowing they were most numerous, and naturally jealous of the large ones. "If we examine the constitu-