

Address of the Minority of the Maryland Convention, Annapolis *Maryland Gazette*, 1 May 1788 (excerpt)

... The following amendments to the proposed constitution were separately agreed to by the committee, most of them by an *unanimous* vote, and all of them by a *great majority*:

1. That congress shall exercise no power but what is expressly delegated by this constitution.

By this amendment, the general powers given to congress by the first and last paragraphs of the 8th sect, of art. 1, and the second paragraph of the 6th article, would be in a great measure restrained: those dangerous expressions by which the bills of rights and constitutions of the several states may be repealed by the laws of congress, in some degree moderated, and the exercise of *constructive* powers wholly prevented.

2. That there shall be a trial by jury in all criminal cases, according to the course of proceeding in the state where the offence is committed; and that there be no appeal from matter of fact, or second trial after acquittal; but this provision shall not extend to such cases as may rise in the government of the land or naval forces.

3. That in all actions on debts or contracts, and in all other controversies respecting property, of which the inferior federal courts have jurisdiction, the trial of facts shall be by jury, if required by either party; and that it be expressly declared, that the state courts, in such cases, have a concurrent jurisdiction with the federal courts, with an appeal from either, only as to matter of law, to the supreme federal court, if the matter in dispute be of the value of _____ dollars.

4. That the inferior federal courts shall not have jurisdiction of less than _____ dollars; and there may be an appeal in all cases of revenue, as well to matter of fact as law, and congress may give the state courts jurisdiction of revenue cases, for such sums, and in such manner, as they may think proper.

5. That in all cases of trespasses done within the body of a county, and within the inferior federal jurisdiction, the party injured shall be entitled to trial by jury in the state where the injury shall be committed; and that it be expressly declared, that the state courts, in such cases, shall have concurrent jurisdiction with the federal courts; and there shall be no appeal from either, except on matter of law; and that no person be exempt from such jurisdiction and trial but ambassadors and ministers privileged by the law of nations.

6. That the federal courts shall not be entitled to jurisdiction by fictions or collusion.

7. That the federal judges do not hold any other office of profit, or receive the profits of any other office under congress, during the time they hold their commission.

The great objects of these amendments were, 1st. To secure the trial by jury in all cases, the boasted birth-right of Englishmen, and their descendants, and the palladium of civil liberty; and to prevent the *appeal from fact*, which not only destroys that trial in civil cases, but by *construction*, may also elude it in criminal cases: a mode of proceeding both expensive and burthensome, and also by blending law with fact, will destroy all

check on the judiciary authority, render it almost impossible to convict judges of corruption, and may lay the foundation of that gradual and silent attack on individuals, by which the approaches of tyranny become irresistible. 2d. To give a concurrent jurisdiction to the state courts, in order that congress may not be compelled, as they will be under the present form, to establish inferior federal courts, which if not numerous will be inconvenient, and if numerous very expensive; the circumstances of the people being unequal to the increased expence of double courts, and double officers; an arrangement that will render the law so complicated and confused, that few men can know how to conduct themselves with safety to their persons or property, the great and only security of freemen. 3dly, To give such jurisdiction to the state courts, that transient foreigners, and persons from other states, committing injuries in this state, may be amenable to the state, whose laws they violate, and whose citizens they injure. 4thly, To prevent an extension of the federal jurisdiction, which may, and in all probability will, swallow up the state jurisdictions, and consequently sap those rules of descent and regulations of personal property, by which men now hold their estates; and lastly, To secure the independence of the federal judges, to whom the happiness of the people of this great continent will be so greatly committed by the extensive powers assigned them.

8. That all warrants without oath, or affirmation of a person conscientiously scrupulous of taking an oath, to search suspected places, or to seize any person or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend any person suspected, without naming or describing the place or person in special, are dangerous, and ought not to be granted.

This amendment was considered indispensable by many of the committee, for congress having the power of laying excises, the horror of a free people, by which our dwelling-houses, those castles considered so sacred by the English law will be laid open to the insolence and oppression of office, there could be no constitutional check provided, that would prove so effectual a safeguard to our citizens. General warrants too, the great engine by which power may destroy those individuals who resist usurpation, are also hereby forbid to those magistrates who are to administer the general government.

9. That no soldier be enlisted for a longer time than four years except in time of war, and then only during the war.

10. That soldiers be not quartered in time of peace upon private houses, without the consent of the owners.

11. That no mutiny bill continue in force longer than two years. These were the only checks that could be obtained against the unlimited power of raising and regulating standing armies, the natural enemies to freedom, and even with these restrictions, the new congress will not be under such constitutional restraints as the parliament of Great-Britain; restraints which our ancestors have bled to establish, and which have hitherto preserved the liberty of their posterity.

12. That the freedom of the press be inviolably preserved.

In prosecutions in the federal courts for libels, the constitutional preservation of this great and fundamental right, may prove invaluable.

13. That the militia shall not be subject to martial law, except in time of war, invasion or rebellion.

This provision to restrain the powers of congress over the militia, although, by no means so ample as that provided by magna charta, and the other fundamental and constitutional laws of Great Britain, (it being contrary to magna charta to punish a freeman by martial law in time of peace, and murder to execute him,) yet it may prove an inestimable check; for all other provisions in favour of the rights of men, would be vain and nugatory, if the power of subjecting all men able to bear arms to martial law at any moment, should remain vested in congress.

Thus far the amendments were agreed to.

The following amendments were laid before the committee, and negatived by a majority.

1. That the militia, unless selected by lot or voluntarily enlisted, shall not be marched beyond the limits of an adjoining state, without the consent of their legislature or executive.

2. That congress shall have no power to alter or change the time, place or manner, of holding elections for senators or representatives, unless a state shall neglect to make regulations, or to execute its regulations, or shall be prevented by invasion or rebellion; in which cases only congress may interfere, until the cause be removed.

3. That, in every law of congress imposing *direct* taxes, the collection thereof shall be *suspended* for a certain reasonable time therein limited, and on payment of the sum by any state, by the time appointed, such taxes shall not be collected.

4. That no standing army shall be kept up *in time of peace*, unless with the consent of two thirds of the members present of each branch of congress.

5. That the president shall not command the army in person, without the consent of congress.

6. That no treaty shall be effectual to repeal or abrogate the *constitutions* or *bills of rights* of the states, or any part of them.

7. That no regulation of commerce, or navigation act, shall be made, unless with the consent of two thirds of the members of each branch of congress.

8. That no member of congress shall be eligible to any office of profit under congress during the time for which he shall be appointed.

9. That congress shall have no power to lay a *poll tax*.

10. That no person, conscientiously scrupulous of bearing arms in any case, shall be compelled *personally* to serve as a soldier.

11. That there be a responsible council to the president.

12. That there be no national religion established by law, but that all persons be equally entitled to protection in their religious liberty.

13. That all imposts and duties laid by congress shall be placed to the credit of the state in which the same be collected, and shall be deducted out of such state's quota of the common or general expences of government.

14. That every man hath a right to petition the legislature for the redress of grievances in a peaceable and orderly manner.

15. That it be declared, that all persons intrusted with the legislative or executive

powers of government are the trustees and servants of the public, and as such accountable for their conduct. Wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old, or establish a new government; the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

The committee having proceeded thus far, all the members who voted for the ratification declared, that they would engage themselves under every tie of honour to support the amendments they had agreed to, both in their public and private characters, until they should become a part of the general government; but a great majority of them insisted on this express condition, that none of the propositions rejected, or any others, should be laid before the convention for their consideration, except those the committee had so agreed to.

The gentlemen of the minority, who had made the propositions which had been rejected, reduced to the necessity of accommodating their sentiments to the majority, through fear of obtaining no security whatever for the people—notwithstanding they considered *all* the amendments as highly important to the welfare and happiness of the citizens of the states, yet to conciliate, they agreed to confine themselves to the first three of those propositions, and solemnly declared and pledged themselves, that if these were added, and supported by the other gentlemen, they would not only cease to oppose the government, but give all their assistance to carry it into execution so amended. Finally, they only required liberty to take the sense of the convention on the three first propositions, agreeing that they would hold themselves bound by the decision of a majority of that body.

The first of these objections concerning the militia they considered as essential, for to march beyond the limits of a neighbouring state, the general militia, who consist of so many poor people that can illy be spared from their families and domestic concerns, by power of congress, who could know nothing of their circumstances, without consent of their own legislature or executive, ought to be restrained.

The second objection respecting the power of congress to alter elections, they thought indispensable. Montesquieu says, that the rights of election should be established unalterably by fundamental laws in a free government.

The third objection concerning previous requisition, they conceived highly important; they thought if money required by direct taxation could be paid with certainty and in due time to congress, that every good consequence would be secured to the union, and the people of the state thereby relieved from the great inconvenience and expence of a double collection and a double set of tax-gatherers, and they might also get rid of those odious taxes by excise and poll, without injury to the general government.

They were, however, again proposed and rejected....

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