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Hampden

Massachusetts Centinel, 26 January 1788 (excerpts)

Mr. RUSSELL, I have had no hand in the productions respecting the proposed plan of government—but I feel interested as a citizen.—I have waited to see if any motion might be made, or any disposition appear in the Convention, to prevent one of two evils taking place; the first is, *that of rejecting the Constitution*; the second is, *that of adopting it by a bare majority*.

I am not contented with it as it now stands, my reasons are assigned:—

I am not satisfied with the provision for amendments, as it stands in that system, because the amendments I propose, are such as two thirds of the Senate will perhaps never agree to—the indictment by grand jury, and trial of fact by a jury, is not so much set by in the southern States, as in the northern—the great men there, are too rich and important to serve on the juries, and the smaller are considered as not having consequence enough to try the others; in short, there can be no trial by peers there:—The middle States gain advantages by having the legal business done in one of them, which may prevent their leading men, from engaging seriously in amendments:—I therefore propose the adopting the Constitution, in the following manner, in which I conceive there will be great unanimity.

THAT this Convention do adopt and ratify the Constitution, or frame of government for the United States of America, proposed by the Federal Convention, lately holden at Philadelphia; upon the following conditions, viz.

That the first Congress which shall be holden under the same, shall before they proceed to exercise any powers possessed under the Constitution, excepting those of organizing themselves, and of establishing rules of procedure, take into consideration all amendments proposed by the Convention of this or any other State, and to make such amendments therein proposed as aforesaid, as any seven of the States shall agree to; and which amendments shall be considered as a part of the Constitution.

And that the Senators and Representatives of the several States, shall set together in one body, and vote by States, in considering such amendments;—but the President or Vice-President elect, shall have no vote therein.

The AMENDMENTS PROPOSED.

FIRST. *In the fourth section of the article of the Senate, strike out these words, “But Congress may, at any time, by law, make, or alter, such regulation, except as to the place for choosing Senators;” and insert these words, “But if any State shall refuse to prescribe time and place for such elections, Congress shall provide therefor by laws made for that purpose.”*

Remark—this amendment takes off the main objection made to this article, and gives Congress power to perpetuate its own existence.

2d. In the second clause of the ninth section insert the words—“And the Supreme Judicial Courts of the several States, and either Judge thereof, shall have power to issue this writ.”

This secures the right of Habeas Corpus, without going to Pennsylvania for it.¹

3d. In the eighth section of the powers of Congress, strike out the word, “Taxes.”

This leaves the powers of impost and excise to Congress. And should war, or any other circumstance render internal taxes necessary to be in Congress, they may have the power granted hereafter.

4th. In the second section of the Judiciary Power, strike out the following words, “Between a State and a citizen of another State, between citizens of different States.”

Laying a State liable to be sued, robs it of all its sovereignty, and in this case may lay the several States liable to be sued for their publick securities.

*5th. In the second clause of the same section, strike out the words, “Both as to law and fact,” and add to that clause these words—*Provided nevertheless, that all issues of fact shall be tried by a jury to be appointed according to standing laws made by Congress.

This will preserve the inestimable right of a trial by jury.—This right is the democratical balance in the Judiciary power, without it, in civil actions, no relief can be had against the High Officers of State, for abuse of private citizens; without this the English Constitution would be a tyranny.—See Judge Blackstone’s excellent Commentary on this privilege, in his third volume, page —²

6th. In the last clause in the same section next after the word State, insert these words, In, or near the County.

This keeps up the idea of trial in the vicinity. See the Massachusetts declaration of rights on this point³—Also, that of other States, &c.

*7th. At the end of the same clause, add these words—*Provided that no person shall be held to answer to any charge of a criminal nature, unless it be upon indictment of a Grand Jury, appointed, sworn and charged according to known and standing laws.

This is the greatest security against arbitrary power; without this, every person who opposes the violation of the constitutional right of the people, may be dragged to the bar, and tried upon a bare *information* of an Attorney-General.—The loss of this privilege carries with it the loss of every friend to the people.—There is no instance yet, in England, or in America, excepting in the Stuart’s reign, of a person’s being tried for his life, otherwise than upon indictment.⁴ It was attempted before the Revolution, but successfully opposed.

1. “Hampden” presumes that the federal capital will be in Pennsylvania, where the U.S. Supreme Court will sit.

2. Blackstone, *Commentaries*, Book III, chapter XXIII, “Of the Trial by Jury,” especially pp. 379–85.

3. Article XIII of the Massachusetts Declaration of Rights provides that “In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.”

4. “Hampden” probably refers to events that occurred in 1642 involving Parliament and Charles I, the second Stuart monarch.