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The Proceedings of Congress, July 1789

House Debates, Tuesday, 21 July 1789

JAMES MADISON [Virginia]

Begged the house to indulge him in the further consideration of amendments to the constitution, and as there appeared, in some degree, a moment of leisure, he would move to go into a committee of the whole on the subject, conformably to the order of the 8th of last month.

FISHER AMES [Massachusetts]

Hoped that the house would be induced, on mature reflection, to rescind their vote of going into committee on the business, and refer it to a select committee: It would certainly tend to facilitate the business. If they had the subject at large before a committee of the whole, he could not see where the business was likely to end. The amendments proposed were so various, that their discussion must inevitably occupy many days, and that at a time when they can be ill spared; whereas a select committee could go through and cull out those of the most material kind, without interrupting the principal business of the house. He therefore moved, that the committee of the whole be discharged, and the subject referred to a select committee.

THEODORE SEDGWICK [Massachusetts]

Opposed the motion, for the reasons given by his colleague, observing that the members from the several states proposing amendments, would no doubt drag the house through the consideration of every one, whatever their fate might be after they were discussed, now gentlemen had only to reflect on this, and conceive the length of time the business would take up, if managed in this way.

ALEXANDER WHITE [Virginia]

Thought no time would be saved by appointing a select committee. Every member would like to be satisfied with the reasons upon which the amendments offered by the select committee are grounded, consequently the train of argument which gentlemen have in contemplation to avoid, must be brought forward.

He did not presume to say the constitution was perfect, but it was such as had met with the approbation of wise and good men in the different states. Some of the proposed amendments were also of high value, but he did not expect they would be supported by two thirds of both houses, without undergoing a thorough investigation. He did not like to refer any business to a select committee, until the sense of the house had been expressed upon it, because it rather

tended to retard than dispatch it, witness the collection bill which had cost them much time, but after all had to be deserted.

ROGER SHERMAN [Connecticut]

The provision for amendments made in the fifth article of the constitution, was intended to facilitate the adoption of those which experience should point out to be necessary.—This constitution has been adopted by eleven states, a majority of those eleven have received it without expressing a wish for amendments; now, is it probable that three fourths of the eleven states will agree to amendments offered on mere speculative points, when the constitution has had no kind of trial whatever? It is hardly to be expected that they will: Consequently we shall lose our labour, and had better decline having any thing farther to do with it for the present.

But if the house are to go into a consideration, it had better be done in such a way as not to interfere much with the organization of the government.

JOHN PAGE [Virginia]

Hoped the business would proceed as heretofore directed: He thought it would be very agreeable to the majority of the union; he knew it would to his constituents, to find that the government meant to give every security to the rights and liberties of the people, and to examine carefully into the grounds of the apprehensions expressed by several of the state conventions; he thought they would be satisfied with the amendments brought forward by his colleague, when the subject was last before the house.

GEORGE PARTRIDGE [Massachusetts]

Mr. Partridge knew the subject must be taken up in some way or another, and preferred, for the sake of expedition, doing it by a select committee.

JAMES JACKSON [Georgia]

Was sorry to see the house were to be troubled any further on the subject—he looked upon it as a mere waste of time; but as he always chose the least of two evils, he acquiesced in the motion for referring it to a special committee.

ELBRIDGE GERRY [Massachusetts]

Asked whether the house had cognizance of the amendments proposed by the state conventions, if they had not, he would make a motion to bring them forward.

JOHN PAGE [Virginia]

Mr. Page replied that such motion would be out of order, until the present question was determined.

A desultory conversation ensued, and it was questioned whether the subject generally was to be before the committee of the whole, or those specific propositions only which had already been introduced.

ELBRIDGE GERRY [Massachusetts]

Said that it was a matter of indifference how this question was understood, because no gentleman could pretend to deny another the privilege of bringing forward propositions conformable to his sentiments. If gentlemen, then, might bring forward resolutions to be added, or motions

of amendment, there would be no time saved even by referring the subject to a special committee: But such procedure might tend to prejudice the house against an amendment neglected by the committee, and thereby induce them not to shew that attention to the state which proposed it that would be delicate and proper.

He wished gentlemen to consider the situation of the states—seven out of thirteen had thought the constitution very defective, yet five of them have adopted it with a perfect reliance on congress for its improvement: Now, what will these states feel if the subject is discussed in a select committee, and their recommendations totally neglected. The indelicacy of treating the application of five states in a manner different from other important subjects, will give no small occasion for disgust, which is a circumstance that this government ought carefully to avoid. If, then, the house could gain nothing by this manner of proceeding, he hoped they would not hesitate to adhere to their former vote for going into a committee of the whole. That they would gain nothing was pretty certain, for gentlemen must necessarily come forward with their amendments to the report when it was brought in. The members from Massachusetts were particularly instructed to press the amendments recommended by the convention of that state at all times, until they had been maturely considered by congress; the same duties were made incumbent on the members from some other states; consequently, any attempt to smother the business, or prevent a full investigation, must be nugatory, while the house paid a proper deference to their own rules and orders. He did not contend for going into a committee of the whole at the present moment; he would prefer a time of greater leisure than the present, from the business of organizing the government.

FISHER AMES [Massachusetts]

Answered the house, that he was no enemy to the consideration of amendment; but he had moved to rescind their former vote, in order to save time, which he was confident would be the consequence of referring it to a select committee.

He was sorry to have an intention avowed by his colleague, of considering every part of the frame of this constitution:—It was the same as forming themselves into a convention of the United States; he did not stand for words, the thing would be the same in fact. He could not but express a degree of anxiety at seeing the system of government encounter another ordeal when it ought to be extending itself to furnish security to others. He apprehended, if the zeal of some gentlemen broke out on this occasion, that there would be no limits to the time necessary to discuss the subject; he was certain the session would not be long enough; perhaps they might be bounded by the period of their appointment, but he questioned it.

When gentlemen suppose themselves called upon to vent their ardor in some favorite pursuit, in securing to themselves and their posterity, the inestimable rights and liberties they have but just snatched from the hand of despotism; they are apt to carry their exertions to an extreme; but he hoped the subject itself would be limited, not that he objected to the consideration of the amendments proposed, indeed he should move himself for the consideration, by the committee, of those recommended by Massachusetts, if his colleagues omitted to do it; but he hoped gentlemen would not think of bringing in new amendments, such as were not recommended, but went to tear the frame of government into pieces.

He considered a select committee much better calculated to consider and arrange a complex business, than a committee of the whole; he thought they were like the senses to the soul, and on an occasion like the present, could be made equally useful.

If he recollected rightly the decision made by the house on the 8th of June, it was that certain specific amendments be referred to the committee of the whole; not that the subject generally be referred, and that amendments be made in the committee, that were never contemplated before; this public discussion, would be like a dissection of the constitution, it would be defacing its symmetry, laying bare its sinews and tendons, ripping up the whole form and tearing out its vitals; but is it presumable that such conduct would be attended with success, two thirds of both houses must agree in all these operations, before they can have effect. His opposition to going into the committee of the whole, did not arise from any fear that the constitution would suffer by a fair discussion in this, or any other house; but while such business was going on, the government was laid prostrate, and every artery ceased to beat. The unfair advantages that might be taken in such a situation, were easier apprehended than resisted: Wherefore, he wished to avoid the danger, by a more prudent line of conduct.

THOMAS TUDOR TUCKER [South Carolina]

Would not say whether the discussion alluded to by the gentleman last up, would do good or harm, but he was certain it ought to take place no where but in a committee of the whole; the subject is of too much importance for a select committee. Now, suppose such a committee to be appointed, and that the amendments proposed by the several states, together with those brought forward by the gentleman from Virginia, are referred to them; after some consideration they report—but not one of the amendments proposed by either state—what is the inference? They have considered them, and as they were better capable than the house of considering them, the house ought to reject every proposition coming from the state conventions. Will this give satisfaction to the states who have required amendments? Very far from it. They will expect that their propositions shall be fully brought before the house, and regularly and fully considered; if indeed then they are rejected, it may be some satisfaction to them, to know that their applications have been treated with respect.

What I have said with respect to the propositions of the several states, may apply in some degree to the propositions brought forward by the gentleman (mr. Madison) from Virginia; the select committee may single out one or two, and reject the remainder, notwithstanding the vote of the house for considering them. The gentleman would have a right to complain, and every state would be justly disgusted.

Will it tend to reconcile to the government that great body of the people who are dissatisfied, who think themselves and all they hold most dear, unsafe under it? Without certain amendments are made, will it answer any one good purpose to slurr over this business, and reject the propositions without giving them a fair chance of a full discussion? I think not, mr. speaker. Both the senate and this house ought to treat the present subject with delicacy and impartiality.

The select committee will have it in their power so to keep this business back, that it may never again come before the house; this is an imprudent step for us to take—not that I would insinuate it is an event likely to take place, or which any gentleman has in contemplation. I give every gentleman credit for his declaration, and believe the honorable mover means to save time

by this arrangement; but do not let us differ on this point; I would rather the business should lay over for a month, nay, for a whole session, than have it put into other hands, and passed over without investigation.

ELBRIDGE GERRY [Massachusetts]

Enquired of his colleague how it was possible that the house could be a federal convention without the senate, and when two thirds of both houses are to agree to the amendments? He would also be glad to find out how a committee were the same to the house as the senses to the soul? What, said he, can we neither see, hear, smell nor feel, without we employ a committee for the purpose? My colleague further tells us, that if we proceed in this way, we shall lay bare the sinews and tendons of the constitution; that we shall butcher it, and put it to death. Now what does this argument tend to prove? Why, sir, to my mind, nothing more nor less than this, that we ought to adopt the report of the committee, whatever that report may be, for we are to judge by the knowledge derived through our senses, and not to proceed on to commit murder. If these are arguments to induce the house to refer the subject to a select committee, they are arguments to engage to go further, and give into the hands of select committees the whole legislative power:—But what is that was said respecting a public discussion? Are gentlemen afraid to meet the public ear on this topic? Do they wish to shut the gallery doors? Perhaps nothing would be attended with more dangerous consequences.—No, sir, let us not be afraid of full and public investigation; let our means, like our conclusions, be justified; let our constituents see, hear, and judge for themselves.

The question on discharging the committee of the whole on the state of the union from proceeding on the subject of amendments, as referred to them, was put, and carried in the affirmative; the house divided, 34 for it, and 15 against it.

It was then ordered, that mr. Madison's motion, stating certain specific amendments, proper to be proposed by congress to the legislatures of the states, to become, if ratified by three-fourths thereof, part of the constitution of the United States, together with the amendments to the said constitution as proposed by the several states, be referred to a committee, to consist of a member from each state, with instruction to take the subject of amendments to the constitution of the United States, generally into their consideration, and to report thereupon to the house.

The committee appointed, were messrs. Vining, Madison, Baldwin, Sherman, Burke, Gilman, Clymer, Benson, Goodhue, Boudinot and Gale.

Then the house adjourned.

Newspaper Reports of House Proceedings, Tuesday, 28 July 1789

Mr. VINING, of the committee on amendments to the Constitution, brought in a report, which was read, and laid on the table.

Upon motion of Mr. GERRY, it was voted that 100 copies be struck off for the accommodation of the members.

House Committee of Eleven Report, Tuesday, 28 July 1789

CONGRESS OF THE UNITED STATES.

In the HOUSE of REPRESENTATIVES,

Tuesday, the 28th of July, 1789.

MR. VINING, *from the Committee of eleven, to whom it was referred to take the subject of AMENDMENTS to the CONSTITUTION of the UNITED STATES, generally into their consideration, and to report thereupon, made a report, which was read, and is as followeth:*

In the introductory paragraph before the words, "*We the people,*" add, "Government being intended for the benefit of the people, and the rightful establishment thereof being derived from their authority alone."

ART. 1, SEC. 2, PAR. 3—Strike out all between the words, "*direct*" and "*and until such,*" and instead thereof insert, "After the first enumeration there shall be one representative for every thirty thousand until the number shall amount to one hundred; after which the proportion shall be so regulated by Congress that the number of Representatives shall never be less than one hundred, nor more than one hundred and seventy-five, but each State shall always have at least one Representative."

ART. 1, SEC. 6—Between the words "*United States,*" and "*shall in all cases,*" strike out "*they,*" and insert, "But no law varying the compensation shall take effect until an election of Representatives shall have intervened. The members."

ART. 1, SEC. 9—Between PAR. 2 and 3 insert, "No religion shall be established by law, nor shall the equal rights of conscience be infringed."

"The freedom of speech, and of the press, and the right of the people peaceably to assemble and consult for their common good, and to apply to the government for redress of grievances, shall not be infringed."

"A well regulated militia, composed of the body of the people, being the best security of a free State, the right of the people to keep and bear arms shall not be infringed, but no person religiously scrupulous shall be compelled to bear arms."

"No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law."

"No person shall be subject, except in case of impeachment, to more than one trial or one punishment for the same offence, nor shall be compelled to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

"The right of the people to be secure in their person, houses, papers and effects, shall not be violated by warrants issuing, without probable cause supported by oath or affirmation, and not particularly describing the places to be searched, and the persons or things to be seized."

"The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

ART. 1, SEC. 10, between the 1st and 2d PAR. insert, "No State shall infringe the equal rights of conscience, nor the freedom of speech, or of the press, nor of the right of trial by jury in criminal cases."

ART. 3, SEC. 2, add to the 2d PAR. “But no appeal to such court shall be allowed, where the value in controversy shall not amount to one thousand dollars; nor shall any fact, triable by a Jury according to the course of the common law, be otherwise re-examinable than according to the rules of common law.”

ART. 3, SEC. 2—Strike out the whole of the 3d paragraph, and insert—“In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.”

“The trial of all crimes (except in cases of impeachment, and in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, the right of challenge and other accustomed requisites; and no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a Grand Jury; but if a crime be committed in a place in the possession of an enemy, or in which an insurrection may prevail, the indictment and trial may by law be authorized in some other place within the same State; and if it be committed in a place not within a State, the indictment and trial may be at such place or places as the law may have directed.”

“In suits at common law the right of trial by jury shall be preserved.”

“Immediately after ART. 6, the following to be inserted as ART. 7.”

“The powers delegated by this Constitution to the government of the United States, shall be exercised as therein appropriated, so that the Legislative shall never exercise the powers vested in the Executive or the Judicial; nor the Executive the powers vested in the Legislative or Judicial; nor the Judicial the powers vested in the Legislative or Executive.”

“The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively.”

ART. 7 to be made ART. 8.

Extract from the Journal,

JOHN BECKLEY, CLERK.

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