Debates in the US House of Representatives, Monday, 13 August 1789

John Page [Virginia]

Was positive the people would never support the government, unless their anxiety was removed; they in some instances, adopted it, in confidence of its being speedily amended; they will complain of being deceived, unless their expectations are fulfilled. So much time has elapsed since the subject was first brought forward, said he, that people will not think us serious, unless we now set about and complete it.

He begged gentlemen to consider the importance of the number of citizens, who were anxious for amendments; if these had been added to those who openly opposed the constitution, it possibly might have met a different fate. Can the government, under these circumstances, possess energy, as some gentlemen suppose? Is not the confidence of the people absolutely necessary to support it?

The question was now put, and carried in the affirmative. The house then resolved itself into a committee of the whole, and took the amendments under consideration. The first article run thus, In the introductory paragraph of the constitution, 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.'"

Roger Sherman [Connecticut]

I believe, mr. chairman, this is not the proper mode of amending the constitution. We ought not to interweave our propositions into the work itself, because it will be destructive of the whole fabric. We might as well endeavor to mix brass, iron and clay, as to incorporate such heterogeneous articles; the one contradictory to the other. Its absurdity will be discovered by comparing it with a law: would any legislature endeavor to introduce into a former act, a subsequent amendment, and let them stand so connected. When an alteration is made in an act, it is done by way of supplement; the latter act always repealing the former in every specified case of difference.

Beside this, sir, it is questionable, whether we have the right to propose amendments in this way. The constitution is the act of the people, and ought to remain entire. But the amendments will be the act of the state governments; again all the authority we possess, is derived from that instrument; if we mean to destroy the whole and establish a new constitution, we remove the basis on which we mean to build. For these reasons I will move to strike out that paragraph and substitute another.

The paragraph proposed, was to the following effect; Resolved by the senate and house of representatives of the United States in congress assembled, That the following articles be proposed as amendments to the constitution; and when ratified by three fourths of the state legislatures shall become valid to all intents and purposes, as part of the same.

Under this title, the amendments might come in nearly as stated in the report, only varying the phraseology so as to accommodate them to a supplementary form.

James Madison [Virginia]

Form, sir, is always of less importance than the substance; but on this occasion, I admit that form is of some consequence, and it will be well for the house to pursue that, which upon reflection, shall appear to be the most eligible. Now it appears to me, that there is a neatness and propriety in incorporating the amendments into the constitution itself; in that case the system will remain uniform and entire; it will certainly be more simple, when the amendments are interwove[n] into those parts to which they naturally belong, than it will if they consist of separate and distinct parts; we shall then be able to determine its meaning without references or comparison; whereas, if they are supplementary, its meaning can only be ascertained by a comparison of the two instruments, which will be a very considerable embarrassment, it will be difficult to ascertain to what parts of the instrument the amendments particularly refer; they will create unfavorable comparisons, whereas if they are placed upon the footing here proposed, they will stand upon as good foundation as the original work.

Nor is it so uncommon a thing as gentlemen suppose, systematic men frequently take up the whole law, and with its amendments and alterations reduce it into one act. I am not, however, very solicitous about the form, provided the business is but well completed.

William Loughton Smith [South Carolina]

Did not think the amendment proposed by the honorable gentleman from Connecticut was compatible with the constitution, which declared, that the amendments recommended by congress, and ratified by the legislatures of three fourths of the several states should be part of this constitution; in which case it would form one complete system; but according to the idea of the amendment, the instrument is to have five or six suits of improvements, such a mode seems more calculated to embarrass the people than any thing else, while nothing in his opinion was a juster cause of complaint than the difficulties of knowing the law, arising from legislative obscurities that might easily be avoided. He said that it had certainly been the custom in several of the state governments, to amend their laws by way of supplement: but South Carolina, had been an instance of the contrary practice, in revising the old code; instead of making acts in addition to acts, which is always attended with perplexity, she has incorporated them, and brought them forward as a complete system, repealing the old. This is what he understood was intended to be done by the committee, the present copy of the constitution was to be done away, and a new one substituted in its stead.

Thomas Tudor Tucker [South Carolina]

Wished to know whether the deliberations of the committee were intended to be confined to the propositions on the table, if they were not, he should beg leave to bring before them the amendments proposed by South Carolina; he considered himself as instructed to bring them forward, and he meant to perform his duty by an early and prompt obedience. He wished to have the sense of the house on this point, whether he was in order to bring them forward.

Samuel Livermore [New Hampshire]

Was clearly of opinion that whatever amendments were made to the constitution, that they ought to stand separate from the original instrument. We have no right, said he, to alter a clause, any otherwise than by a new proposition. We have well-established precedents for such a mode of procedure in the practice of the British parliament, and the state legislatures throughout America. I do not mean, however, to assert that there has been no instance of a repeal of a whole law on enacting another; but this has generally taken place on account of the complexity of the original, with its supplements. Were we a mere legislative body, no doubt it might be warrantable in us to pursue a similar method, but it is questionable whether it is possible for us, consistent with the oath

we have taken, to attempt a repeal of the constitution of the United States, by making a new one to substitute in its place; the reason of this is grounded on a very simple consideration. It is by virtue of the present constitution, I presume, that we attempt to make another; now, if we proceed to the repeal of this, I cannot see upon what authority we shall erect another; if we destroy the base, the superstructure falls of course. At some future day it may be asked upon what authority we proceeded to raise and appropriate public monies, we suppose we do it in virtue of the present constitution; but it may be doubted whether we have a right to exercise any of its authorities, while it is suspended, as it will certainly be, from the time that two-thirds of both houses have agreed to submit it to the state legislatures; so that unless we mean to destroy the whole constitution, we ought to be careful how we attempt to amend it in the way proposed by the committee. From hence I presume it will be more prudent to adopt the mode proposed by the gentleman from Connecticut, than it will be to risk the destruction of the whole by proposing amendments in the manner recommended by the committee.

John Vining [Delaware]

Disliked a supplementary form, and said it was a bad reason to urge the practice of former ages when there was a more convenient method of doing the business at hand; he had seen an act entitled an act to amend a supplement to an act entitled an act for altering part of act entitled an act for certain purposes therein mentioned. If gentlemen were disposed to run into such jargon in amending and altering the constitution, he could not help it; but he trusted they would adopt a plainness and simplicity of style on this and every other occasion, which should be easily understood.—If the mode proposed by the gentleman from Connecticut was adopted, the system would be distorted, and like a careless written letter, have more matter attached to it in a postscript than was contained in the original composition.

The constitution being a great and important work, ought all to be brought into one view, and made as intelligible as possible.

George Clymer [Pennsylvania]

Was of opinion with the gentleman from Connecticut, that the amendments ought not to be incorporated in the body of the work, which he hoped would remain a monument to justify those who made it; by a comparison, the world would discover the perfection of the original, and the superfluity of the amendments; he made this distinction because he did not conceive any of the amendments essential, but as they were solicited by his fellow citizens, and for that reason they were acquiesced in by others; he therefore wished the motion for throwing them into a supplementary form might be carried.

Michael Jenifer Stone [Maryland]

It is not a matter of much consequence with respect to the preservation of the original instrument, whether the amendments are incorporated or made distinct; because the records will always shew the original form in which it stood. But in my opinion we ought to mark its progress with truth in every step we take. If the amendments are incorporated in the body of the work, it will appear, unless we refer to the archives of congress, that George Washington, and the other worthy characters who composed the convention, signed an instrument which they never had in contemplation. The one to which he affixed his signature purports to be adopted by the unanimous consent of the delegates from every state there assembled.

Now if we incorporate these amendments, we must undoubtedly go further, and say that the constitution so formed, was defective, and had need of alteration; we therefore purpose to repeal the old and substitute a new one in its place. From this consideration alone I think we ought not to

pursue the line of conduct drawn for us by the committee. This perhaps is not the last amendment the constitution may receive, we ought therefore to be careful how we set a precedent which in dangerous and turbulent times, may unhinge the whole.

With respect to the observations of the gentleman from South Carolina, I shall just remark, that we have no authority to repeal the whole constitution. The words refer[r]ed to in that instrument, only authorises us to propose amendments to it, which, when properly ratified, are to become valid as a part of the same; but these can never be construed to empower us to make a new constitution.

For these reasons I would wish our expressions might be so guarded as to purport nothing but what we really have in view.

Samuel Livermore [New Hampshire]

The mode adopted by the committee, might be very proper provided congress had the forming of a constitution in contemplation; then they, or an individual member might propose to strike out a clause and insert another, as is done with respect to article 3, section 2. But certainly no gentleman, acquainted with legislative business, would pretend to alter and amend in this manner, a law already passed. He was convinced it could not be done properly in any other way than by the one proposed by the gentleman from Connecticut.

Elbridge Gerry [Massachusetts]

Asked if the mode could make any possible difference, provided the sanction was the same; or whether it would operate differently in any one instance? If it will not, we are disputing about form, and the question will turn on the expediency. Now one gentleman tells you, said he, that he is so attached to this instrument that he is unwilling to lose any part of it; therefore to gratify him, we may throw it into a supplementary form. But let me ask, will not this as effectually destroy some parts, as if the correction had been made by way of incorporation, or will posterity have a more favorable opinion of the original, because it has been amended by distinct acts? For my part I cannot see what advantage can accrue from adopting the motion of the honorable gentleman from Connecticut, unless it be to give every one the trouble of erasing out of his copy of the constitution certain words and sentences, and inserting others. But perhaps in our great veneration for the original composition, we may go farther, and pass an act to prohibit these interpolations, as it may injure the text.

All this, sir, I take to be trifling about matters of little consequence. The constitution has undoubtedly provided, that the amendments shall be incorporated, if I understand the import of the words, "and shall be valid to all intents and purposes, as part of the constitution." If it had said that the present form should be preserved, then it would be proper to propose the alterations by way of a supplement. One gentleman has said we shall lose the names that are now annexed to the instrument. They are names, sir, I admit, of high respect; but I would ask that gentleman, if they would give validity to the constitution if it was not ratified by the several states, or if their names was struck out, whether it would be of less force than it is at present? If he answers these questions in the negative, I shall consider it of no consequence whether the names are appended to it or not. But it will be time enough to discuss this point when a motion is made for striking them out.

If we proceed in the way proposed by the honorable gentleman from Connecticut, I presume the title of our first amendment will be, a supplement to the constitution of the United States; the next a supplement to the supplement, and so on, until we have supplements annexed five times in five years, wrapping up the constitution in a maze of perplexity; and as great an adept as that honorable gentleman is at finding out the truth, it will take him, I apprehend, a week or a fortnight's study to ascertain the true meaning of the constitution.

It is said, if the amendments are incorporated it will be a virtual repeal of the constitution; I say the effect will be the same in a supplementary way, consequently the objection goes for nothing, or it goes against making any amendments whatever.

It is said that the present form of the amendments is contrary to the 5th article: I will not undertake to define the extent of the word amendment, as it stands in the fifth article; but I suppose if we proposed to change the division of the powers given to the three branches of the government, and that proposition is accepted and ratified by three-fourths of the state legislatures, it will become as valid to all intents and purposes as any part of the constitution; but if it is the opinion of gentlemen that the original is to be kept sacred, amendments will be of no use, and had better be omitted; whereas, on the other hand, if they are to be received as equal in authority, we shall have five or six constitutions, perhaps differing in material points from each other, but all equally valid; so that they may require a man of science to determine what is or is not the constitution, this will certainly be attended with great inconvenience, as the several states are bound up not to make laws contradictory thereto, and all officers sworn to support it without knowing precisely what it is.

Michael Jenifer Stone [Maryland]

Asked the gentleman last up, how he meant to have the amendments incorporated? Was it intended to have the constitution republished, and the alterations inserted in their proper places? He did not see how it was practicable to propose amendments, without making out a new constitution, in the manner brought forward by the committee.

John Laurance [New York]

Could not conceive how gentlemen meant to ingraft the amendments into the constitution: The original one executed by the convention at Philadelphia, was lodged in the archives of the late congress, it was impossible for this house to take and correct and interpolate that without making it speak a different language, this would be supposing several things which never were contemplated. But what, said he, would become of the acts of congress; they will certainly be vitiated, unless they are provided for, by an additional clause in the constitution.

What shall we say with respect to the ratifications of the several states; they adopted the original constitution, but they have not thereby enabled us to change the one form of government for another. It is true amendments were proposed by some of them, but it does not follow of necessity, that we should alter the form of the original which they have ratified. Amendments in this way are only proper in legislative business, while the bill is on its passage, as was justly observed before.

Egbert Benson [New York]

Said, that this question had been agitated in the select committee, and determined in favor of the form, in which it was reported; he believed this decision was founded in a great degree upon the recommendation of the state conventions, who had proposed amendments in this very form; this pointed out the mode most agreeable to the people of America, and therefore the one most eligible for congress to pursue; it will likewise be the most convenient way. Suppose the amendments ratified by the several states; congress may order a number of copies to be printed, into which the alterations will be inserted, and the work stand perfect and entire.

I believe it never was contemplated by any gentlemen to alter the original constitution deposited in the archives of the union, that will remain there with the names of those who formed it, while the government has a being. But certainly there is convenience and propriety in completing the work in a way provided for in itself. The records of congress, and the several states, will mark the progress of the business, and nothing will appear to be done but what is actually performed.

James Madison [Virginia]

The gentleman last up has left me but one remark to add, and that is, if we adopt the amendment, we shall so far unhinge the business as to occasion alterations in every article and clause of the report.

Thomas Hartley [Pennsylvania]

Hoped the committee would not agree to the alteration, because it would perplex the business: He wished the propositions to be simple and entire, that the state legislatures might decide without hesitation, and every man know what was the ground on which he rested his political welfare. Besides, the consequent changes which the motion would induce, were such as he feared would take up some days if not weeks; and the time of the house was too precious to be squandered away in discussing mere matter of form.

John Page [Virginia]

Was sorry to find the gentlemen stop at the preamble, he hoped they would proceed as soon as the obstruction was removed, and that would be when the motion was negatived.

He thought the best way to view this subject, was to look at the constitution as a bill on its passage through the house, and to consider and amend its defects article by article, for which reason he was for entering at once upon the main business; after that was gone through it would be time enough to arrange the materials with which the house intended to form the preamble.

Samuel Livermore [New Hampshire]

Insisted, that neither this legislature nor all the legislatures in America were authorised to repeal a constitution; and that must be an inevitable consequence of an attempt to amend it in the way proposed by the committee, he would then submit to gentlemen, the propriety of the alteration.

As to the difficulty which had been supposed in understanding supplemental laws; he thought but little of it; he imagined, there were things in the constitution more difficult to comprehend, than any thing he had yet seen in the amendments.

James Jackson [Georgia]

I do not like to differ with gentlemen about form, but as so much had been said, I wish to give my opinion, it is this, that the original constitution ought to remain inviolate, and not be patched up from time to time, with various stuffs resembling Joseph's coat of many colors.

Some gentlemen talk of repealing the present constitution, and adopting an improved one. If we have this power, we may go on from year to year, making new ones; and in this way we shall render the basis of the superstructure the most fluctuating thing imaginable, and the people will never know what the constitution is. As for the alteration proposed by the committee to prefix before "We the people," certain dogmas, I cannot agree to it; the words as they now stand, speak as much as it is possible to speak, it is a practical recognition of the right of the people to ordain and establish governments, and is more expressive than any other mere paper declaration.

But why will gentlemen contend for incorporating amendments into the constitution? They say that it is necessary for the people to have the whole before them in one view; have they precedent for this assertion? Look at the constitution of Great Britain, is that all contained in one instrument? It is well known, that magna charta was extorted by the barons from king John some centuries ago. Has that been altered since by the incorporation of amendments? Or does it speak the same language now, as it did at the time it was obtained? Sir, it is not altered a tittle from its original form. Yet there has been many amendments and improvements in the constitution of Britain since

that period. In the subsequent reign of his son, the great charters were confirmed with some supplemental acts. Is the habeas corpus act, or the statute De Tallagio non concedendo4 incorporated in magna charta? And yet there is not an Englishman but would spill the last drop of his blood in their defence; it is these, with some other acts of parliament and magna charta, that form the basis of English liberty. We have seen amendments to their constitution during the present reign, by establishing the independence of the judges, who are hereafter to be appointed during good behavior; formerly they were at the pleasure of the crown. But was this done by striking out and inserting other words in the great charter? No, sir, the constitution is composed of many distinct acts, but an Englishman would be ashamed to own that on this account he could not ascertain his own privileges or the authority of the government.

The constitution of the union has been ratified and established by the people, let their act remain inviolable; if any thing we can do has a tendency to improve it, let it be done, but without mutilating and defacing the original.

Roger Sherman [Connecticut]

If I had looked upon this question as mere matter of form, I should not have brought it forward or troubled the committee with such a lengthy discussion. But, sir, I contend that amendments made in the way proposed by the committee are void: No gentleman ever knew an addition and alteration introduced into an existing law, and that any part of such law was left in force; but if it was improved or altered by a supplemental act, the original retained all its validity and importance in every case where the two were not incompatible. But if these observations alone should be thought insufficient to support my motion, I would desire gentlemen to consider the authorities upon which the two constitutions are to stand. The original was established by the people at large by conventions chosen by them for the express purpose. The preamble to the constitution declares the act: But will it be a truth in ratifying the next constitution, which is to be done perhaps by the state legislatures, and not conventions chosen for the purpose. Will gentlemen say it is "We the people" in this case, certainly they cannot, for by the present constitution, we nor all the legislatures in the union together, do not possess the power of repealing it: All that is granted us by the 5th article is, that whenever we shall think it necessary, we may propose amendments to the constitution; not that we may propose to repeal the old, and substitute a new one.

Gentlemen say it would be convenient to have it in one instrument that people might see the whole at once; for my part I view no difficulty on this point. The amendments reported are a declaration of rights, the people are secure in them whether we declare them or not; the last amendment but one provides that the three branches of government shall each exercise its own rights, this is well secured already; and in short, I do not see that they lessen the force of any article in the constitution, if so, there can be little more difficulty in comprehending them whether they are combined in one, or stand distinct instruments.

William Loughton Smith [South Carolina]

Read extracts from the amendments proposed by several of the state conventions at the time they ratified the constitution, from which he said it appeared that they were generally of opinion that the phraseology of the constitution ought to be altered; nor would this mode of proceeding repeal any part of the constitution but such as it touched, the remainder will be in force during the time of considering it and ever after.

As to the observations made by the honorable gentleman from Georgia, respecting the amendments made to the constitution of Great-Britain, they did not apply—the cases were nothing like similar, and consequently could not be drawn into precedent. The constitution of Britain is neither the magna charta of John, nor the Habeas Corpus act, nor all the charters put together; it is

what the parliament wills; it is true there are rights granted to the subject that cannot be resumed, but the constitution or form of government may be altered by the authority of parliament, whose power is absolute without controul.

Joshua Seney [Maryland]

Was afraid the house would consume more time than was at first apprehended in discussing the subject of amendments, if he was to infer any thing from what had now taken place: He hoped the question would soon be put and decided.

John Vining [Delaware]

Was an enemy to unnecessary debate, but he conceived the question to be an important one, and was not displeased with the discussion that had taken place; he should, however, vote in favor of the most simple mode.

Elbridge Gerry [Massachusetts]

The honorable gentleman from Connecticut, if I understand him right, says that the words, "We the people" cannot be retained if congress should propose amendments, and they be ratified by the state legislatures: Now if this is a fact, we ought most undoubtedly adopt his motion; because if we do not, we cannot obtain any amendment whatever. But upon what ground does the gentleman's position stand? The constitution of the United States was proposed by a convention met at Philadelphia, but with all its importance it did not possess as high authority as the president, senate, and house of representatives of the union: For that convention was not convened in consequence of any express will of the people, but an implied one, through their members in the state legislatures. The constitution derived no authority from the first convention; it was concurred in by conventions of the people, and that concurrence armed it with power, and invested it with dignity. Now the congress of the United States are expressly authorised by the sovereign and uncontrollable voice of the people, to propose amendments whenever two-thirds of both houses shall think fit: Now if this is the fact, the propositions of amendment will be found to originate with a higher authority than the original system. The conventions of the states respectively have agreed for the people, that the state legislatures shall be authorised to decide upon these amendments in the manner of a convention. If these acts of the state legislatures are not good because they are not specifically instructed by their constituents, neither were the acts calling the first and subsequent conventions.

Does he mean to put amendments on this ground, that after they have been ratified by the state legislatures they are not to have the same authority as the original instrument; if this is his meaning, let him avow it, and if it is well founded, we may save ourselves the trouble of proceeding in the business. But for my part I have no doubt but a ratification of the amendments, in any form, would be as valid as any part of the constitution. The legislatures are elected by the people; I know no difference between them and conventions, unless it be that the former will generally be composed of men of higher characters than may be expected in conventions; and in this case, the ratification by the legislatures would have the preference.

Now if it is clear that the effect will be the same in either mode, will gentlemen hesitate to approve the most simple and clear? It will undoubtedly be more agreeable to have it all brought into one instrument, than have to refer to five or six different acts.

Roger Sherman [Connecticut]

The gentlemen who oppose the motion say we contend for matter of form; they think it nothing more; now we say we contend for substance, and therefore cannot agree to amendments in this way. If they are so desirous of having the business compleated, they had better sacrifice what

they consider but a matter of indifference to get gentlemen to go more unanimously along with them in altering the constitution.

The question on Mr. Sherman's motion was now put and lost.

Samuel Livermore [New Hampshire]

Wished to know whether it was necessary, in order to carry a motion in committee, that two-thirds should agree.

Thomas Hartley [Pennsylvania]

Mentioned that in Pennsylvania they had a council of censors who were authorised to call a convention to amend the constitution when it was thought necessary, but two-thirds were required for that purpose; he had been a member of that body, when they had examined the business in a committee of council, the majority made a report, which was lost for want of two-thirds to carry it through the council.

Some desultory conversation took place on this subject, when it was decided by the chairman of the committee, that a majority of the committee were sufficient to form a report.

An appeal being made from the opinion of the chair, it was, after some observations, confirmed by the committee, after which the committee rose and reported progress.

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