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New York Assembly Debates, 4 February 1789

The house then went again into committee on the draft of an application to Congress to call a convention to revise and propose amendments to the new constitution.

Mr. [Alexander] Webster in the chair.

The following draft of an application to Congress was read.

Resolved (if the honorable the senate concur herein) that an application be made to the Congress of the United States of America in the name and behalf of the legislature of this state, in the words following, to wit

The people of the state of New-York having ratified the constitution agreed on the 17th September, 1787, by the convention then assembled at Philadelphia, as explained by the said ratification, in the fullest confidence of obtaining a revision of the several articles of the said constitution by a general convention. In compliance, therefore, with the unanimous sense of the convention of this state, who all united in opinion, that such a revision was necessary to recommend the said constitution to the approbation and support of a numerous body of their constituents, and a majority of whom conceived the constitution so exceptionable that nothing but such confidence, and an invincible reluctance to separate from our sister states could have prevailed upon a sufficient number to assent to it without stipulating for previous amendments, and from a conviction that the apprehensions or discontents which those articles occasion, cannot be removed or allayed, unless an act to revise the said constitution be among the first that shall be passed by the new Congress: WE, the legislature of the state of New-York, DO, in behalf of our constituents, in the most earnest and solemn manner, make this application to the Congress, that a convention of deputies from the several states be immediately called, with full power to take the said constitution into their consideration, and to report such amendments thereto as they shall find best suited to promote our common interests, and secure to ourselves and our latest posterity the great and unalienable rights of mankind.

BROCKHOLST LIVINGSTON. I do not rise, Mr. Chairman, to oppose an application to Congress for a revision of the new Constitution, but to state my objections to its being made in the form of the resolution now under consideration. I must, however, be indulged in declaring that when I give my assent to making any application to Congress upon this subject, it is not from a conviction that any amendments whatever are necessary. I consider the constitution as perfect as we could reasonably have expected it from the hands of men. But as a revision of the system will have a tendency to render it more universally acceptable, it may not be improper to take some measures on our part to obtain it in a constitutional way. It is with us to determine in what mode this revision should be had, so as to promote the salutary ends we all have in view.

Sir, the constitution of the United States provides that amendments may be obtained either by Congress proposing them to the legislatures of the different states, or by calling a new convention for the purpose. Will it not then be prudent to leave it to the discretion of Congress to determine which of these two modes will be best calculated to answer the end the resolution has in view, and not to insist on their calling a convention immediately?

Conventions are assemblies which should as seldom as possible be resorted to, where the ordinary administration is adequate to the object. Here the government are vested with powers expressly comprehending the present case. Is there any danger that these powers will not be called into exercise if the public good requires it? Of whom will Congress be composed? Are not the senators chosen by the different state legislatures, and the other branch by the people themselves? Will they not be acquainted with the sentiments and wishes of their constituents? Will they not feel every obligation, as well as inclination, to pursue such measures as will best accord with those sentiments and wishes? From an assembly thus constituted, may we not expect that the proper amendments will be proposed as soon as possible after their first meeting? To whom are these amendments to be submitted? To the legislatures of the several states, who will doubtless ratify such of them as in their estimation will be acceptable to their constituents. This mode of proceeding is attended with fewer embarrassments, and will take up much less time, than what must necessarily elapse before a convention can be assembled; the result of whose deliberations (should they ever agree) must undergo the same discussion as those which may be proposed by Congress. Should Congress believe a majority of the people wish for amendments, it is probable that the legislature of this state, at their very next meeting, may be employed in deliberating on some of their proposing—while, from the time that must unavoidably transpire in the summoning and meeting of a convention, the advocates for amendments can scarcely flatter themselves with a speedy revision of the system in that way.

But delay is not the only inconvenience attendant on a new convention. Dangers of a more serious nature are to be apprehended. It is well known that this state, as well as some others, are divided into two parties, federal and antifederal. These terms are not used with a view of casting an odium on the one or the other; but because I do not recollect any other term that is so generally applied, or is better understood. Gentlemen have been blamed for mentioning that parties exist in the state; but when the notoriety of the fact renders concealment impossible, and when pertinent arguments may be drawn from the present situation of the country, where can be the impropriety in taking notice of it. If then parties exist, what will be their conduct in the case of a convention? Will not federalists choose federalists; and those of an opposite character, send members possessing the same sentiments with themselves? Will members thus chosen feel all that independence of sentiment so essential to a cool and dispassionate consideration of the constitution they are to revise? Will a body composed of such heterogeneous materials, be likely to accord in any one amendment? Will not the same spirit of party which influenced their election, continue to actuate the different members of the convention, until they are compelled to return home, without effecting any alteration in the new system of government? Should this be the case, will all those who desire amendments feel disposed to acquiesce in that disappointment? We might indeed have expected that this would have been the case, had not an honorable gentleman,^(a) who was one of the managers in a late conference between the two houses, declared in the presence of both, that he hoped his constituents would never rest satisfied until they had

obtained the amendments they desired. This, sir, is going much farther than our convention have gone, and it is to be sincerely hoped that the gentleman may be mistaken in the sentiments he entertains of his constituents. Should these, however, be the real intentions of so respectable a part of the community, and should pains be taken to disseminate them still farther, what are we to expect in case of the convention's rising without proposing amendments, but a civil war? The gentleman who made this declaration may have familiarised himself to such an event. His nerves may be sufficient to meet it, and to carry him through without emotion; but, for my own part, I cannot, while the devastations of the late war are fresh in my memory, but tremble at the idea of a repetition of them.

Having stated some objections to the immediate calling of a convention, I shall offer a resolution by way of amendment to the one which has just been read, by which Congress are left at liberty to call a convention, or to propose amendments in the other way, as they shall think best. The resolution is as follows:

Resolved, (if the honourable the senate concur herein[]) that an application be made to the Congress of the United States of America, in the name and behalf of the legislature of the state, in the words following, to wit,

Whereas the convention of the good people of the state of New-York, on the 26th day of July last past, assented to and ratified the Constitution proposed on the 17th day of September, in the year of our Lord 1787, by the Convention then assembled at Philadelphia, in confidence nevertheless, "*that the amendments which might be proposed to the said constitution, would receive an early and mature consideration*"

And whereas the said convention at the same time agreed to sundry amendments, and in the name and behalf of their constituents, "*enjoined it upon their representatives in Congress to exert all their influence to obtain a ratification of the same in the manner prescribed in the said constitution.*" Therefore, we the representatives of the people of the state of New-York, in senate and assembly convened, in compliance with the sense of our convention, and anxious that the *necessary amendments* may be introduced as soon as possible, do earnestly and in the most solemn manner call upon the Congress of the United States, to take the amendments recommended by our convention, and by those of our sister states, into their "*early and mature consideration,*" and to take effectual measures to obtain a ratification of such of them as may be deemed necessary to induce a general confidence in the government, either by proposing the same to the legislatures of the different states, or by calling a convention to meet at a period not far remove[d], agreeable to the manner prescribed by the fifth article of the constitution aforesaid, as the one or the other mode of ratification may to them appear best calculated to promote the peace and welfare of the union.

After reading the resolution Mr. Livingston proce[e]ded.

Sir, In framing this resolution I have followed as nearly as possible the sentiments of our convention as expressed in their instrument of ratification. In one place they express a confidence that the amendment[s] which might be proposed, would receive an early and mature consideration, but are silent as to the mode in which that consideration was to be had; in another part, they enjoin it upon their representatives in Congress, to exert all their influence to obtain a ratification of certain amendments in the manner prescribed in the constitution. Here again, nothing is said of a convention.

I am aware it will be mentioned, that by their circular letter, they have recommended the calling of a convention to all the other states. But, Sir, notwithstanding the respect we entertain for the honorable gentlemen who composed that convention; notwithstanding the gratitude we must all feel for their having ratified a form of government which cannot fail of producing the most solid advantages to our country, yet I trust we shall not think ourselves precluded by the advice contained in this letter, further than as it corresponds with our own ideas of propriety. Far be it from me to censure those who signed that letter,¹ yet to prevent its having an undue influence, I shall stand excused for reminding the committee that our convention were chosen for the sole purpose of taking into consideration the new constitution. If we recur to the resolutions under which they acted, we shall find no other authority delegated to them; whatever, therefore, they have done beyond ratifying the constitution, and particularly this letter, must be considered in the light of advice, which we are at liberty to follow or not, as the same may appear expedient or otherwise.

Upon the whole, the amendment which is brought forward is so unexceptionable, that I cannot but hope it will meet with the approbation of the committee. [New York *Daily Advertiser*, 19 February 1789]

SAMUEL JONES. I am not a little surprized at what I have heard. The arguments appear to me to be extraordinary. We are told, in the first place, that it would be improper to call a convention immediately, because there are parties in the states, and that the persons chosen to go to the convention will be the representatives of those parties. But, the representatives to be chosen in the several states, to represent them in Congress, are not to be men of party; they are to be divested of all those prejudices which have been created since the new constitution has been the subject of political speculation and party rage. Sir, is there not a contradiction in this reasoning? Will not these parties have as much influence in the choice of members of Congress, as in the choice of members of convention? Can this be doubted? Why then are we to look to Congress, as a body in whom party heats and prejudices will be unknown? It is said too, that it is too soon to call a convention—that bad consequences will follow from it, in case they do not come to a happy result; and yet, if we leave it to the new government to propose amendments, notwithstanding every thing will be new to them, and it will be a long time before they get organized, and can take up the subject; yet it is said we shall probably be deliberating on amendments that they shall propose, before even a convention can be called. Really, sir, these arguments have no weight in them—they are fallacious. Again, it is said that the convention of the state did not request that a convention should be called immediately. But, sir, this sentiment is expressed in the ratification; if the gentleman will recur to it, he will find the proposed application conformable thereto. Sir, we need not apprehend that a convention will be called too soon—it will take a long period of time for the new government to get organized; and tho' I have not the smallest doubt of two thirds of the states in the union making an application, yet two years at least will elapse before an act can be passed, and a Convention called. Sir, the arguments of the gentleman, as it respects the ratification of the convention, is not fair; the inference he draws from it is not just. The convention could not, in the instrument of ratification, insist upon the calling of a convention; but if they could, it would not have been prudent in them to have attempted it. But they could express their sentiments in a circular letter, and it is well known that they did this, and unanimously recommended the calling a convention; how far they had a

right to do this I submit to the committee, and to the world. And I have not a doubt but their conduct is approved of. Sir, the convention of this state never would have ratified the constitution, if they had not been persuaded that their sister states in the union would have consented to call a convention, and if the circular letter had not been agreed to by both parties. Indeed this may be considered as a condition on which the constitution was ratified. Can it then be expected of us that we will submit to the general government to make the amendments? Was it ever known that the rulers themselves would say, you have trusted us with too much power, we therefore beg of you to take back a part of it? That they may want more power is highly probable; but it is not in the nature of man to suppose that too much confidence is reposed in them; they are never disposed to contemplate an abuse of power which they hold in their own hands. Shall we, therefore, trust to our own rulers to make amendments for us? The reason why there are two modes of obtaining amendments prescribed by the constitution I suppose to be this—it could not be known to the framers of the constitution, whether there was too much power given by it or too little; they therefore prescribed a mode by which Congress might procure more, if in the operation of the government it was found necessary; and they prescribed for the states a mode of restraining the powers of the government, if upon trial it should be found they had given too much. In my opinion, therefore, we ought to call for a convention as the proper line chalked out by the constitution for the people to obtain such amendments as to them appear essential to their happiness.

I am sorry that the sentiments of an individual, who he is I do not know, should be taken up as the sentiments of the people. The sentiments of the convention ought to have the preference; and we ought to pay deference to that sentiment only. The convention have declared a convention of the states to be necessary—even if no amendments are made; it will certainly quiet the apprehensions of a great number of people, and thereby give additional spirit to the new government itself. And, sir, I believe that peace will never be perfectly restored to the United States, until a convention is called, and they either declare that no amendments are necessary, or propose some.

But, sir, with respect to the existence of parties, it is natural, and is to be expected as a consequence resulting from freedom. There are parties in all free governments—at least, I have no knowledge of any in which party did not exist. One will sometimes be strongest—sometimes the other: In our country, which ever may prevail, I hope they will always pursue the great rights of mankind.

JOHN LANSING, JR. In discussing this business, I shall pay some attention to the remarks of the gentleman [Brockholst Livingston] who has brought forward the amendment; and I believe I can convince the committee that it would be improper to adopt it, unless they hold the same ideas as the gentleman himself. If agreed to, it would appear, instead of urging to Congress the necessity of calling a convention, that we did it barely in compliance with the recommendation of the late convention, and that it is repugnant to our own sentiments. The resolution as reported by the committee who were appointed to essay it, declares that the people of the state of New-York wish a convention called to revise the new system of general government. Sir, we are to believe that the resolution reported by them is the sense of the people, in as much as it is conformable to the unanimous sentiment of the late convention, who were elected by the people for the special purpose of giving their sentiments on that subject—and further, sir, I believe it

speaks the sense not only of this house, but of the legislature, and a very great majority of the people of the state. As the convention I say were called to express the sense of the people on the new constitution, we ought to respect their opinion. That convention adopted the constitution, not because they approved of it, but because the pressure of circumstances, and the ratification of it by a number of our sister states, had an influence on a majority of the members of that body. Sir, when the subject was under their consideration, men of all parties—of all descriptions—and all views, united in the opinion that a convention of the states, and the immediate revision of the system was necessary; indeed the unanimity which prevailed in the convention on the subject of the circular letter, is the strongest proof of the sentiments of the people. I am not apprehensive therefore that the sense of our constituents can be conveyed in too strong terms. This being my sentiments, it can not be supposed that I shall advocate the amendment proposed by the gentleman—for it will not in my opinion convey the sentiments of the people of the state. Is it probable that a revision will take place in the mode prescribed by the gentleman? the national government will be a long time making the necessary arrangements—for it is yet to be organized—and they will have a variety of important objects to pay immediate attention to; indeed much more than they can accomplish in two or three years. We are not to suppose that they will abandon all the national objects that will be before them to decide on the different amendments that have been proposed—After all this time expires, and Congress do propose amendments, then they are to go to the states, where another considerable period of time must elapse before three-fourths of the states agree to them. In the one instance we submit the propriety of making amendments to men who are sent, some of them for six years, from home, and who lose that knowledge of the wishes of the people by absence, which men more recently from them, in case of a convention, would naturally possess. Besides, the Congress, if they propose amendments, can only communicate their reasons to their constituents by letter, while if the amendments are made by men sent for the express purpose, when they return from the convention, they can detail more satisfactorily, and explicitly the reasons that operated in favour of such and such amendments—and the people will be able to enter into the views of the convention, and better understand the propriety of acceding to their proposition.

The hon. gentleman [Brockholst Livingston] who has brought forward the amendment is fearful that the convention will be called at too early a day; for my part, I wish it was possible to anticipate the business; for the sooner amendments are made, the better. I should have preferred calling a convention before the meeting of Congress, was it practicable.

Sir, we have heard the word party too often mentioned. I suppose there is a material difference in what is now termed party, than that which originates in particular attachments to particular men—the present division of the people, arising from constitutional causes. One part of them supposing the new constitution a good one and the other supposing it dangerous to their happiness; this is the opinion of the majority of our constituents, as is evidenced by the complexion of this house. The reason why a different sentiment prevails in the senate may be accounted for from this cause; that that branch of the legislature is composed of men not so recently elected by the people; they were most of them chosen at a time when the present political dispute was unthought of; but, sir, this house speaks the sentiments of the people; for the majority of the members have been elected under that influence which is opposed to the new government. I am pained when I make these observations; but I do it to explain the distinctions that prevail at

present, and they are such as are founded on fact. But, sir, it is insinuated, that if we do not leave this power with Congress, it will be supposing them not trust worthy. Sir, this is not a fair supposition, for it is impossible for any member to entertain such opinions without knowing of what characters Congress may be composed. But, sir, it is reasonable to expect that Congress will be unwilling to relinquish any of the powers that are given. Mankind are not disposed to give up advantages that they possess; it is easier to give power than to reclaim it. The contest between the two houses clearly proves this principle.

BROCKHOLST LIVINGSTON. I shall be very short in my reply to the remarks of the two gentlemen who were last on the floor. In opposition to the proposed resolution, it is said that Congress will be too much embarrassed by a variety of important business, during their first session to attend to the subject of amendments. In answering this objection it may be asked, whether any more important object can claim their attention than the revision of the very system by which they are constituted, nor will this subject require as much time or avocation from their other concerns, as is apprehended. All the amendments which have been proposed by the different states, will lay before them. From these may be selected and recommended to the different legislatures such as may be deemed the most salutary: But should Congress be of opinion that a majority of their constituents are satisfied with the constitution in its present form, they will certainly act wisely not to recommend any innovations until experience shall have evinced the necessity of them.

Again, it is said, that a majority of the good people of the United States, and of this state in particular, are solicitous for the immediate assembling of a new convention. Was I satisfied of this being the fact, averse as I feel to this mode of obtaining amendments, I should think it my duty to give it every support. But I am yet to be convinced that this is the case: Several states, have unanimously ratified the new constitution, others have done it by very large majorities, without saying a syllable upon the subject of amendments, or a new convention; whence then is it to be inferred, that a major part of the people are anxious for this measure. It is by no means certain that a majority of our immediate constituents think it expedient.

One other remark which escaped those gentlemen ought not to pass unnoticed. They both observed that the new constitution would probably not have been adopted by our convention, unless the gentlemen who had from the first advocated this measure, had consented to sign the circular letter. If this information be true, (and it certainly is, for it comes from two gentlemen who had the honor of being members of that convention) it militates much against the attention which ought otherwise to be paid to a proceeding which had the appearance of being adopted with so much unanimity. If I say this letter was the result of compromise or compulsion, surely as much credit is not due to it, as if every member had signed it voluntarily and without any other consideration than a conviction of its being an eligible step. This was so far from being the case, that several gentlemen, whose names appear to that letter, from the information which has been given the committee, seem to have been placed in such a situation as to have no alternative but that of signing the letter or losing the constitution. They preferred the former as the least of the two evils. The respect we were all ready to pay to the unanimous recommendation of our convention, must be much weakened now we are informed by what means this unanimity was effected.

I shall make but one observation more. The proposed resolution goes much farther than the circular letter of our convention. By the latter it is recommended that a convention meet at *a*

period not far remote. By the application before us, we desire a convention may be assembled *immediately*. There is a very great and manifest difference between these terms. From this guarded expression of our convention we may conclude, that while they wished measures might be immediately taken to *call* a convention to satisfy a part of their constituents, they did not judge it expedient that this convention should assemble until experience had pointed out the defects of the new system, and therefore fixed the time of their meeting to a *period not far remote*. [New York Daily Advertiser, 21 February 1789]

SAMUEL JONES. With respect to the circular letter, I have no recollection if I said they were compelled to sign it. I think that I did not say so. The fact is, they were not compelled to sign it. The friends of the constitution dictated it themselves. There are some of the members in both houses who were of that convention²—let them declare the fact.

JOHN LANSING, JR. If I conveyed an idea that there was compulsion in the framing of the circular letter, it was what I did not intend—nor do I believe I did express a sentiment of the kind. Sir, I said that the change that took place between the time of election and the time of ratification, had an influence on a majority of the convention to ratify the constitution—tho' it did not alter their sentiments in respect to the merits of it. The question then was, how were they to shew the disapprobation of the state on the subject?—and all parties agreed in the measure of writing a circular letter, inviting our sister states to join with us to effect a revision of the system;—the better to secure the liberties of the people.

WILLIAM W. GILBERT. I think a great deal of what has been said, is foreign to the subject; the only question before the committee is, whether we shall apply to Congress to call a convention, or whether we shall leave it to them to exercise their discretion, in either calling a convention, or proposing amendments. We are to answer this question, in my opinion, by asking another—Are the proceedings of the convention binding?—if they are binding, are they so in the whole, or in part? For my part I think them binding in the whole; if so, we are bound to respect them, and we have no discretion on the present question—we must vote for calling a convention.

RICHARD HARISON. I feel myself peculiarly circumstanced upon the present occasion. I could wish to have remained silent—but it may be necessary that I give the committee my ideas. I am in sentiment opposed to the amendment offered by the gentleman from New York;—and yet I differ with the gentlemen who oppose it: I shall not however, enter into any argument on the subject, as my sense of amendments to the new constitution will appear on the journals of the convention—and I have hitherto seen no reason to alter my opinion. I think that if the amendments which were proposed in that body were adopted, that it would defeat the constitution by rendering it useless. But as a member of that convention, when I considered the situation of the state, and the sentiments that prevailed among a great number of the people, and the heats that had taken place, I was induced to think that every measure which could allay the apprehensions of the people, and prevent mischiefs which were then contemplated, ought to be adopted. Under these impressions I signed the circular letter. I was willing that the constitution should be submitted to a convention; not doubting but the good sense of the citizens of America would not rashly make such alterations as would impair its beauty—or enervate any of its essential parts; and that they would weigh well all that could be said for and against it. I am not unwilling, sir, to trust my countrymen; if I am mistaken in my opinion, I will submit to their's. And tho' the constitution is in my opinion as good as can be expected, yet I do not consider it so perfect as

not to want improvement; if therefore a convention can point out any alterations tending to promote the happiness of the people, I shall think it my duty to acquiesce. And I must confess that I think the calling of a convention, the only means to restore peace and harmony to our country, and to destroy those parties that exist amongst us;—under this impression I shall vote against the amendment.

Sir, I can not think it right that any invidious comparisons should be drawn between the two houses. I consider both of them as the representatives of the people, with whose sentiments I suppose them equally acquainted. We do not, sir, know what may be the sense of the people, in respect to the proceedings of this legislature; but to the bar of the public the two houses will have to appeal; where, if the conduct of the one or the other is approved of, they will again be sent forward as their representatives. Sir, gentlemen in either house may maintain opposite principles; but it is cruel to suppose they do not originate in pure motives. We are to suppose that both houses act conscientiously.

JOHN LANSING, JR. I believe, sir, that the gentlemen of the committee will recollect the expressions I made; and what I said cannot be construed into an invidious distinction. I stated facts, and they cannot be contradicted. I say, that the last year, when an election was had, that throughout the state, it took a complexion from the sentiments of the people, as they respect the new constitution; and the consequence is, that in this house we have a majority for amendments. I say, too, that the senate, having been elected at an earlier period, do not entertain the same sentiments, and that this difference in the two houses, arises from the senate not having come so recently from the people. When I state these facts, I disclaim any intention of injuring the feelings of the senate.

On the question to agree to the amendment proposed by Mr. B. Livingston.

[At this point the roll call was printed. Livingston's motion was defeated 43–9.]

The committee then rose and asked for leave to sit again. [New York *Daily Advertiser*, 23 February 1789]

(a) *Mr. G[ilbert] Livingston*

1. The copy of the circular letter appended at the end of the Conventions manuscript journal is signed by Clinton and forty-six delegates. Eighteen delegates did not sign.

2. Of the sixty-five assemblymen elected, thirty had been state Convention delegates, while ten of the twenty-four senators elected had sat in the Convention.

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