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REMARKS *on the Amendments to the Federal Constitution, proposed by the Conventions of Massachusetts, New-Hampshire, New-York, Virginia, South and North-Carolina, with the minorities of Pennsylvania and Maryland, by a FOREIGN SPECTATOR.*

NUMBER VIII.

A Good militia is the natural, easy, powerful and honorable defence of a country. Even those nations which are surrounded with formidable neighbours, need not altogether depend on great standing armies, which are not favourable to liberty, and create an enormous expence. Indeed regular troops are more excellent, as they resemble a militia; which is evidently seen in the Swedish army, and acknowledged by the best military writers of different nations. America will be well defended against any attack by the united strength of a small but well appointed army, and a numerous well ordered militia. The federal government is empowered to provide for the organizing and calling forth this principal branch of national defence, by the 15th and 16th par. in 8th sect. of 1st art. on which the following amendments are proposed. *That each state respectively shall have the power to provide for organizing, arming and disciplining its own militia, whensoever congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service, in time of war, invasion, or rebellion: and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments as shall be directed or inflicted by the laws of its own state.* Convent. of Virginia and N. Carol. 11 am. *That the power of organizing, arming, and disciplining the militia (the manner of disciplining the militia to be prescribed by Congress) remain with the individual states; and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree.* Minor. of Pennsylvania, 11 am. *That the militia shall not be subject to martial law, except in time of war, invasion, or rebellion; and that it shall not, unless selected by lot, or voluntarily enlisted, be marched beyond the limits of an adjoining state, without the consent of their legislature or executive.* Min. of Maryl. 11 and 1 am.^(a) *That the militia of any state shall not be compelled to serve without the limits of the state for a longer term than six weeks, without the consent of the legislature thereof.* Conv. of New-York, 29 am. Before I enter on the discussion of these amendments, I beg leave to observe the want of agreement, and the silence of the New-Hampshire convention with those of South-Carolina and Massachusetts, who, as was remarked above, are satisfied with the military powers of the new constitution. The request, that each state respectively

may provide for organizing, &c. its own militia, whensoever Congress shall omit or neglect to provide for the same, I humbly presume to be a mere suggestion of jealousy. Congress never can omit such an important and general duty without a treasonable design, which supposes many preceding degrees of corruption; but this corruption cannot continue and accumulate in a body formed and frequently changed by the people, except the people themselves are thoroughly corrupted.

The proposition, that a state-government may controul the power of Congress to call the militia out of the state, must be regarded as hastily formed in the fermentation of party, and now disavowed by every American, who regards the safety and honor of the union and of his own state. If a powerful enemy invades any part of the United States, he must be opposed with all possible expedition, before he gets possession of any important passes, lays the country under contributions, defeats the weak forces that fall in his way, and creates the usual calamities of war. Sympathy with a sister state, and the assurance that she will in time of need repay the obligation, are sufficient motives to lend what aid the common guardian requires. The federal power watches for the whole union, views the magnitude of the danger, knows the resources of every state, and feels impartially for all; it is therefore the best judge of what they should in every emergency do and suffer for each other. That the militia should not be called to a further distance, and in greater numbers, or kept in the field for a longer time than is necessary, every person of sense will readily grant; that a select body is in real danger, much preferable to a multitude of ordinary militia, every military man well knows; but every regulation on this important matter should be left to the general government. It will certainly not be so liable to an abuse of such power as a state-government, which, with all its generosity, cannot in the same manner think and feel for the United States. What may be the consequence of recalling the militia on the eve of a decisive battle? Perhaps the conquest of two or three states, and the miseries of war for several years!

The constitution *reserves to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.* This surely is a perfect security to any state against an encroachment of the federal power. The safety of the union requires that the militia of every state should be well armed, and in every respect qualified for the defence of the country, consequently general and effectual regulations must be made by Congress. Fines, penalties, and punishments of a proper kind are a necessary part of discipline; if these are to be exercised by the several states, it is needless to compliment the Congress with the ridiculous power of organizing the militia.

A citizen, as a militia man is to perform duties which are different from the usual transactions of civil society; and which consequently must be enforced by congenial laws and regulations. These military duties have in time of peace no other object than a compleat preparation for war, and therefore do not require that rigour of martial law, which is indispensable in actual service;— yet when we consider the extreme importance of every military duty in time of war, and the necessity of acquiring an habitual exercise of them in time of peace; it would be childish to enervate by a scrupulous delicacy that manly discipline, which is the bulwark of the country— Give us then, for heaven's sake, martial law enough to be truly martial when we are to face the veterans of a powerful enemy.

Fines alone are very insufficient to prevent the various kinds of neglect and misdemeanor in the militia service, because they will not affect the rich, and at the best only produce a mechanical

compliance without life and spirit. Disgrace in different and just degrees is the most effectual penalty; and it will keep alive that high sense of military honor, without which a militia is only a disorderly populace, or a mass of animal machines. With an equitable allowance for age, bodily infirmities, religious opinions, and pressing avocations, absence and the hiring of substitutes should be held dishonorable. Not to join your company, because you can earn more than the fine in your shop or your field; or because you had rather loll in an easy chair; or because you like the gambling table better than the drum; oh, for shame! not to learn that noble art, by which you can defend your life, liberty and property; your parents, wife and children! in a day of danger to be defended by others like a weak woman and a helpless child! A man of spirit will be delighted with the play of arms in all the manœuvres that present the image of real war. Though worth 10,000*l.* a year he cheerfully takes his place in the rank with a day laborer, who is his brother-citizen, and defender of the common country—His fortune only inspires the noble pride of a greater application to the theory and practice of the military art, that by superior abilities he may deserve the honor to command a band of patriots.

As the constitution makes no mention of martial law, it is not my business to enter further into this subject; only observing that the only means to render a standing army useless, is to form a truly warlike militia.

(a) *This minority has two sets of amendments; the latter negatived by a majority of the committee.*

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